

MARRIAGE CASE MANUAL

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MARRIAGE CASE MANUAL

A Formulary, with Summaries of Substantive Law, the Law on Procedure,
and Policies

by

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in cooperation with

The Committee for Forms

of the

Conference of Chancery and Tribunal Officials of The

Province of New Orleans

Restricted Edition 1953
2nd Edition: Revised 1958

NIHIL OBSTAT:

Patricius Gillespie
Censor Librorum
Diexx, Mensis Novembris, 1957.

IMPRIMATUR:

Josephus F. Rummel
Archiepiscopus Novae Aureliae
Diex Mensis Decembris, 1957.

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Dedicated To
The Most Reverend Archbishop of New Orleans

And To
The Most Reverend Bishops of the Province

Most Reverend Joseph F. Rummel, S. T. D.
Most Reverend Thomsa J. Toolen, D. D.
Most Reverend Richard O. Gerow, S. T. D.
Most Reverend Albert L. Fletcher, D. D.
Most Reverend Charles P. Greco, D. D.
Most Reverend Maurice Schexnayder, D. D.

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FOREWORD
to the first edition

The chief purpose of this Manual is to furnish Diocesan Tribunals with the forms most frequently used in the processing of marriage cases. These forms may be modified, according to the prudent judgment of the proper officials, to meet the circumstances peculiar to each individual case.

The Manual contains sections on Defect of Form, Previous Bond, Pauline Privilege, Favor of the Faith and Formal cases. The forms for each type of case are prefaced with a summary of the substantive law and an explanation of the procedure to be followed in preparing a case for adjudication. An introductory section outlines the various types of cases, explains the organization of the Tribunal and the duties of the officials, summarizes the law on all diriment impediments and essential defects of consent and contains forms that are applicable in the general work of the Tribunal. The section on formal cases contains a summary of the Instruction of the Sacred Congregation of Sacraments of August 15, 1936 (A. A. S., XXVIII, 313) on the adjudication of marriage cases. These features may perhaps qualify the Manual to serve as a book for ready-reference and as a text to introduce priests and seminarians to the intricate task of marriage case work.

A general table of contents at the front of the Manual indicates the several sections into which the Manual is divided, while each section contains a special index which lists and explains each entry in that particular section.

The entire Manual was prepared under the supervision of the Committee for Forms of The Conference of Chancery and Tribunal Officials of the Province of New Orleans. This Committee was composed of the following members; Rt. Rev. Monsignor J. R. O'Donoghue, P. A. (Mobile); Rt. Rev. Monsignor S. J. De Keuwer (Alexandria); Rev. Robert Gordon Raine (New Orleans); Very Rev. Warren L. Boudreaux, J. C. D. (Lafayette); Rev. Lawrence P. Graves, J. C. L. (Little Rock); Very Rev. Josiah G. Chatham, S. T. L., J. C. D. (Natchez), Chairman.

Besides the members of the Committee for Forms, a number of others gave generously of their time and talent in correcting the Manual and in offering helpful suggestions. A complete listing of these is not possible, but the following deserve special mention: Rt. Rev. Monsignor Joseph B. Brunini, J. C. D.; Very Rev. James J. Hannon, J. C. D.; Very Rev. Thomas U. Bolduc, S. M.; Very Rev. John E. Murphy, S. T. D.; Rev. Joseph Vath, J. C. L.; Rev. Stanley J. Iverson; Mr. Charles Coignard.

Any merit which the Manual may possess is due to the interest, encouragement and support of the Most Reverend Ordinaries of the Province of New Orleans.

In its present form, the Manual is issued in a restricted edition to be used under the critical supervision of the Most Reverend Ordinaries who may wish to subject it to trial. If experience justifies it, an edition for general use may be published at a later date. In the meantime corrections and suggestions are invited, and, for these the Committee for Forms of the Province of New Orleans will be grateful. Observations and inquiries concerning the Manual may be directed to the Chairman of the Committee for Forms, P. O. Box 2130, Jackson, Mississippi.

FOREWORD
to the second edition

When the first edition of this Manual was published on a restricted basis, its authors declared that "The chief purpose of this Manual is to furnish Diocesan Tribunals with the forms most frequently used in the processing of marriage cases." That it has accomplished this end is evidenced by the fact that almost without exception, the forms found herein are in use in the Tribunals of the six dioceses which comprise the Province of New Orleans.

No less valuable are the sections of the Manual which deal with the substantive law of marriage and judicial procedure in marriage cases. While the Manual contains only a summary of these phases of Canon Law and is meant to be used only as a hand-book, it has proved to be an excellent introduction to the intricacies of marriage cases, particularly for the busy parish priest. The simple, concise nature of the text in conjunction with the forms actually used in marriage trials will quickly remove the fear which often makes one "shy away" from introducing marriage cases or working on the Tribunal as Advocate-Procureur or in any other roles.

During the past five years The Conference of Chancery and Tribunal Officials of the Province of New Orleans has sponsored each summer a Canon Law Institute at which the Manual was used partly as a text-book. The Institute rotated among the dioceses and lasted two weeks the first year and one week thereafter; the attendance each year was excellent, there being no less than sixty priests taking the full course. The requests for the Manual which followed each institute is one reason for this second edition: it is believed that many priests will welcome the opportunity to have a copy for their bookshelf.

Another reason for this new edition is the number of requests for copies that have come from diocesan officials outside the Province of New Orleans.

The undersigned was appointed by the Conference of Chancery and Tribunal Officials to undertake the revision and publication of this edition. Every effort has been made to make as few changes as possible; the forms have been changed only in the interest of clarification and brevity--they have stood the test of use for five years-- and there are some additions which are expected to prove useful in marriage case work.

Raymond A. Wegmann
Vice-Chancellor
Archdiocese of New Orleans

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GENERAL INTRODUCTION

AND

GENERAL FORMS

GENERAL INTRODUCTION AND GENERAL FORMS

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GENERAL INTRODUCTION

and

GENERAL FORMS

§ 1. Substantive Law and the Law on Procedure

1. The adjudication of marriage cases is a part of the apostolate of the Church. This Manual has a twofold purpose; the defense of the sacredness of marriage on the one hand, and the defense of human liberty on the other. The Church defends the sacredness of marriage by insisting upon its indissolubility within the context of the teaching of Christ; it defends human liberty by going to great pains to obtain the freedom to marry of persons who have entered into matrimonial alliances that are not binding in the eyes of God, or which are dissoluble under the law of God. There are many unfortunate Catholics who can be readmitted to the sacraments and begin again to lead normal spiritual lives only if the priests and Tribunals of the Church undertake the arduous task of solving their marriage cases. There are many prospective converts who may never be received into the Church unless their matrimonial status is first clarified. Tribunal work, therefore, is a real apostolate. In spite of this, a solution favorable to the parties can never be found in many marriage cases because of the primacy that God has placed upon the sacredness and indissolubility of marriage. For these reasons, matrimonial case work must be approached studiously, conscientiously and prayerfully.

2. The substantive law of God and of the Church sets forth the nature of marriage, the essential qualities of marriage, the essential qualifications of the contracting parties, and the essential solemnities which must be fulfilled for the contract of marriage to be valid and binding. Conversely, a marriage can be invalid in terms of this substantive law of God and of the Church. The substantive law of the Church on marriage is contained in the Code of Canon Law, canons 1012-1117. In adjudicating marriage cases, the most important elements of substantive law are those which state the nature of marriage, the essential qualities of consent, the diriment impediments, the canonical form of marriage, and the extrinsic dissolubility of the marriage bond in certain instances of non-ratification or non-consummation. In the latter part of this GENERAL INTRODUCTION these elements of substantive law will be summarized.

3. The law on procedure sets forth the rules and formalities that the Tribunals of the Church must follow in treating marriage cases. These laws are a concrete expression of the Church's power to judge; they are also the expression of centuries of experience. The laws on procedure are designed to discover the truth, to protect the sacredness of marriage, and to vindicate the rights of the faithful. The law of the Church on procedure in matrimonial trials is found in Book IV, Part I, of the Code of Canon Law.

§ 2. Types of Processes

4. As far as marriage cases are concerned, we may say that the canon law on procedure finds expression in seven different types of processes.

a. Lack of Form Cases: Canons 1094-1103. In a lack of form case there is question of a marriage having been invalid from the beginning because the essential formalities were not observed at the time of the attempted contract. When the essential facts can be clearly established, one judge can decide the case and the Defensor Vinculi does not have to intervene; nor is it necessary

to appeal against an affirmative decision. This is the most frequent type of marriage case which a priest is called upon to handle in his ministry, and is purely administrative in character. A special section of this Manual has been devoted to the substantive law and procedure in Defect of Form cases.

b. Informal Cases: Canons 1990-1992. In the informal process, the proof is drawn chiefly from documents which must be certain and authentic; one judged decides the case; the Defensor Vinculi must intervene; the parties must be summoned; and generally no appeal is required against an affirmative decision. Canon 1990 gives an exhaustive list of the cases that may be handled under this informal process: Disparity of Cult, Sacred Orders, Solemn Vow of Chastity, Prior Bond, Consanguinity, Affinity and Spiritual Relationship. Of these cases, by far the most frequent is that of Ligamen. A special section of this Manual, therefore, has been devoted to Ligamen cases.

c. Informal Cases Referred to the Holy See. Questions concerning the validity of marriage may be referred to the Sacred Congregation of Sacraments, (canon 249, § 1) or, if one of the parties to the marriage is a non-Catholic, to the Holy Office (canon 247, § 3). This is a consideration which is frequently overlooked. At times a marriage case may come to the attention of a Tribunal and the nature of the case or of the proofs may be such that the Tribunal will not know how to proceed or will doubt the cogency of the proofs. Frequently such cases can be drawn up in informal fashion and sent by the Ordinary to the proper congregation. The Holy See at times will settle these cases; at times it will issue instructions as to how to proceed; or it will remand the case to a Tribunal for adjudication.

d. Formal Cases: Canons 1960-1989. All cases concerning the nullity of marriage besides Defect of Form cases and cases handled under Canon 1990, must be subjected to formal proceedings (Canon 1576 § 1. 10). Such cases are tried by a Collegiate Tribunal of at least three judges; the Defender of the Bond must intervene; the Parties are represented by counsel; if a favorable decision is given, it must be appealed to the Court of the Second Instance where the case is subjected to the same process; no final sentence may be executed until two courts have concurred in the sentence. The final section of this Manual gives a summary of the formal process and presents the forms which are most essential to the Tribunal in this type of case.

e. Pauline Privilege Cases: Canons 1120-1127. In Pauline Privilege cases, there is no question of the invalidity or nullity of marriage. Rather, there is a question of the marriage not having been ratum because both parties remained unbaptized, and being subject to dissolution when the conditions set down by St. Paul and the law of the Church are verified. Pauline Privilege cases occur rather frequently and can be handled entirely by the Ordinary in virtue of his Quinquennial Faculties. A special section of the Manual has been devoted to this type of case.

f. Favor of the Faith Cases: Canons 1120-1127. In a Favor of the Faith case, there is a question of the marriage not having been completely ratum because one of the parties remained unbaptized during the entire time of marital association. This type of case is processed by the local Ordinary or a priest subdelegated by him for action by the Holy Office. A special section in the Manual deals with Favor of the Faith cases.

g. Ratum Non-Consummatum Cases: Canons 1119, 1973 ss. It is Catholic doctrine that the non-consummated marriage of baptized persons or of a baptized and an unbaptized person can be dissolved under certain circumstances by a dispensation from the Holy See. The process is prepared by the local Ordinary for the Holy See according to rules published by the Sacred Congregation

of Sacraments ("Doctrina Catholica, "7 maii, 1923 -- A. A. S. XV, 389-436), and the code of Canon Law, Canons 1973 ss. This type of case may not be opened without the prior delegation of the Ordinary by the Holy See. If both parties are Catholic, the case is handled by the Sacred Congregation of Sacraments; if one party is a non-Catholic, the case is handled by the Holy Office.

§ 3. The Law on Procedure and the Organization of the Tribunal

5. Book IV of the Code of Canon Law treats of processes. The ecclesiastical process finds its fullest expression in the formal judicial trial. The law on formal judicial trials, therefore, is the heart of Book IV. An examination of the general structure of Book IV takes some of the mystery out of this least-known aspect of Canon Law.

The book is divided into two parts. PARS SECUNDA (canons 1999-2141) deals with the process of beatification and of canonization and does not interest us here. PARS PRIMA (canons 1152-1998) is subdivided into two sections. After four introductory canons, Sectio I (canons 1552-1924) deals with trials in general and gives material applicable to all types of trials and processes. Sectio II (canons 1925-1998) applies this general material to several specific types of processes.

One of the specific types of trials treated in this second section is that of marriage cases (canons 1960-1992). These canons on marriage cases do not stand by themselves, but must constantly be used in connection with Sectio I (canons 1552-1924). This becomes a complicated and highly specialized matter. In order to overcome this difficulty, the Sacred Congregation of Sacraments, on August 15, 1936, published an Instruction for Diocesan Tribunals to guide them in their work of processing marriage cases (A. A. S., XXVIII, 313). This document is called the "Provida" or the "Provida Mater Ecclesia" from its opening words. It is also frequently referred to simply as "The Instruction of 1936".

The Instruction of 1936: a) selects from Part I Sectio I of the Code all the canons which apply to marriage cases; b) integrates this material with the special canons in Section II on marriage cases; c) clarifies certain points that were not clear in the canons; and d) lines up the entire process in an orderly fashion, presenting the material in the order in which it is usually needed during a trial.

An English translation of the Instruction is given in Bouscaren, Canon Law Digest, Vol. II (Bruce: Milwaukee, 1943), p. 471 sq. One of the most practical commentaries on the Instruction is: Doheny, Practical Manual for Marriage Cases (Bruce: Milwaukee, 1938). Another excellent commentary is: Torre, Processus Matrimonialis (D'Auria: Naples, 1947). The following paragraphs on the organization of the Tribunal are based upon the Instruction of 1936. Reference is made to the Instruction by Articles (Art). Not every officer of the Tribunal functions in every case. Which officers do take part will depend upon the nature of the process, e. g., whether it is a formal or an informal trial.

6. THE PARTIES: NAMING THE CASE. In every marriage case, the case turns around the marriage which is under scrutiny, i. e., the marriage that is to be declared invalid or dissolved. The two parties to this marriage are the parties to the marriage case: the PARTES IN CAUSA. Of these two parties, one will be pressing for a declaration of nullity; the other will generally maintain a negative attitude, though it is possible for the other party to take a stand

for the validity or for the nullity of the marriage. There is no consistent terminology in the United States for designating the parties to litigation. For the sake of simplicity, in the MANUAL we will refer to the party who is pressing the case as THE PETITIONER, and to the other party as THE RESPONDENT. In Latin, the Petitioner is called the Actor (m.), the Actrix (f.) or the Pars Actrix (m. and f.) in cases in which there is a question of the nullity of the marriage. The Petitioner is called the Orator (m.), the Oratrix (f.) or the Pars Oratrix (m. and f.) in Pauline Privilege, Favor of the Faith and Ratum Non Consummatum cases. The other party is called the Conventus (m.), the Conventa (f.) the Pars Conventa (m. and f.) in all types of cases. A case is given its official designation in terms of the two parties to the case: the name of the Petitioner is placed first; then the name of the Respondent, for example, "SMITH, Alberta vs. JONES, Henricus".

In order to avoid confusion it is advisable to use the maiden names of women throughout; the present names of women in a case may be added in parentheses for purposes of further identification.

The Tribunal will assign a Protocol Number to each case, and this should be done as soon as a canonical Petition has been filed with the Tribunal. The Protocol Number will generally indicate the year and the order in which the Petition was filed: "Prot. N. 51/3" or 3/51 will generally mean "the third petition filed in 1951." There is no consistency in this; some Tribunals maintain a separate docket and a separate numeration for different types of cases; e.g., "F. F. 51/4" would mean "the fourth Favor of the Faith case on which a Petition was filed in 1951". In writing to the Tribunal about a case, the priest in the parish should preface his letters with the names of the Parties and the Protocol Number of the case.

7. THE JUDGES: In every diocese and for all cases that are not expressly excepted, the Ordinary of the Place is the Judge (canon 1572, § 1). As a general rule, however, the Bishop does not fulfill the functions of judge personally, except in cases that are handled under the summary proceedings of canons 1990-1992 (cf. canon 1578); and even these cases are frequently delegated to the Officialis.

Just as the Vicar General is the Bishop's alter ego in administrative matters, the Officialis is the Bishop's alter ego in judicial matters, and, therefore, the Code states: "Officialis unum constituit tribunal cum Episcopo loci" (canon 1573). This phrase of the Code explains a point of terminology: the term "Tribunal" is sometimes used to refer to the Bishop, sometimes to the Officialis, and sometimes to refer to the entire court with all its officers.

There may be one or several Vice-Officiales who fulfill the same functions as the Officialis. In every formal case the Officialis or one of the Vice-Officiales is the Praeses or Presiding Judge and, as such, he directs the whole trial and decides what is necessary for the administration of justice (Art. 14, § 2). The Officialis functions in virtue of ordinary jurisdiction. It has been mentioned above that in informal cases, handled under canons 1990-1992, the Ordinary may give a special mandate to the Officialis to settle informal cases if the Ordinary is absent or otherwise impeded (Art. 228).

Every diocese must have at least four and not more than twelve other judges who will function in virtue of delegated jurisdiction. If they are appointed by the Bishop in the synod, they are called Synodal Judges; if they are appointed outside the synod, they are called Pro-Synodal Judges. The difference is merely one of terminology (canon 1574, § 1). In every formal trial at least two of these Judges serve with the Officialis, forming a panel of judges called

the Collegiate Tribunal. A panel of judges is called a turnus because the panels are set up in a regular order of rotation. This order of service is set up by the Bishop or by the Officialis (Art. 14, § 4). If he deems it expedient, the Ordinary can depart from the regular rotation and set up a special panel of judges for an individual case (canon 1576, § 3).

8. THE PONENS OR RELATOR. One of the judges of each Collegiate Tribunal (in formal cases) acts as Ponens or Relator. It is his duty to report on the case to the collegiate board and to draw up the final version of the sentence in Latin. The Presiding Judge (who will always be the Officialis or Vice-Officialis) appoints the Ponens in each trial, and, for a just cause, may change him. The Presiding Judge, with the consent of the other members of the Collegiate Tribunal, may act as Ponens (Art. 21).

9. THE AUDITOR OR INSTRUCTOR. An Auditor or Instructor is a priest who is appointed to prepare a case for the judge or Collegiate Tribunal which will pass sentence on the case. As a general rule, an Auditor will be one of the judges. In formal cases the Auditor may be a person distinct from the Collegiate Tribunal. The Auditor summons and hears parties and witnesses and can perform any function except those that are reserved to the Collegiate Tribunal. He cannot, therefore, pass final sentence on a case and his functions may be further restricted in the mandate of his appointment. The Ordinary can appoint Auditors to prepare all cases. The Officialis can appoint an Auditor for a particular case. An Auditor can be appointed to process an entire case, or to take care of an individual step in a case, such as the taking of the testimony of a single witness (Art. 23-25).

10. THE DEFENSOR VINCULI. The function of the Defender of the Bond is to uphold the validity of the marriage which is being adjudicated. His presence is always required in the evolution of the formal process, and, if he is not summoned or cited for a given phase of a formal case, that particular phase is invalid. As far as validity is concerned, however, all that is required is that the Defender be summoned; if he is summoned and does not appear, the act is valid but must later be submitted to his scrutiny and comment (Art. 15). The Defensor Vinculi prepares the questions that are to be asked of Parties and witnesses; he is present, or, at least, summoned, when all testimony is taken in formal cases; before sentence is passed in a case, whether formal or or informal, he writes his observations or animadversions. In these animadversions, it is the duty of the Defensor Vinculi, while avoiding specious argument, to use every reasonable argument to show that the marriage was valid, or, at least, to show that there is a positive doubt about the invalidity and that, therefore, the marriage must be presumed valid. When an affirmative decision is rendered in a formal trial the Defender of the Bond must appeal the case to a higher Tribunal (Art. 212, § 2).

11. THE PROMOTOR IUSTITIAE. The Promotor of Justice has two principal functions: a) to exercise vigilance over the observance of the law on procedure when instructed to do so by the Ordinary, by the Collegiate Tribunal, or upon his own insistence or that of the Defensor Vinculi; b) to bring action for a declaration of nullity when required or permitted to do so by the provisions of Canon Law (Art. 16). The circumstances under which the Promotor of Justice may bring action in a case are given in Art. 35-36 of the Instruction of 1936. Very definite limitations are placed upon the Promotor's capacity to impugn the validity of a marriage, especially in instances of defective consent and in other cases in which a party was the culpable cause of the impediment or of the invalidity (Art. 38-39). This is a very difficult point of law and conclusions should be reached only after careful study and consultation. In cases in which the Promotor of Justice is not impugning the validity of the marriage, the office of Promotor and of Defensor Vinculi may be united in the same person (Art. 36).

12. THE NOTARY. The Notarius or Actuarius is the official recorder of the trial and custodian of the records. The proceedings are considered as null if they are not written or at least signed by him. Therefore, before work is begun on any case, the Presiding Judge designates one of the Notaries who have been appointed according to canon 373, unless the Ordinary sees fit to designate someone for a particular case (Art. 17). The duties of the Notary are most important because only those things which are contained in the official acts (or file) of a case may be considered in passing sentence on the case. "Quod non est in actis, non est in mundo." The Notary will see that a sufficient number of copies of all acts are prepared. He compares all copies with the original papers and certifies them with his "concordat cum originali." In formal cases, it is highly desirable that each judge, the Defensor Vinculi and (at the end of the trial) the Advocate for the Petitioner have a complete file on the case. This saves a great deal of time and permits the officials to make a more careful study of the case.

13. COURT MESSENGER. There are two types of court messengers: the cursor who communicates notice of the proceedings; and the apparitor who executes the sentences and decrees of the Tribunal when instructed to do so. The same person may serve both functions (Art. 18). The most important practical duty of the court messenger is to serve the summons upon parties and witnesses. His functions can generally be fulfilled also by the use of registered mail.

14. THE OATH OF THE MEMBERS OF THE TRIBUNAL. All members of the Tribunal, with the exception of the Ordinary, must take an oath of office. If someone is appointed permanently to a given office, he takes the oath when appointed and it is not necessary for the oath to be repeated before each case (Art. 20).

§ 4. Summary of Substantive Law: Diriment Impediments;
Essential Defects of Consent; Grounds for Dissolution

15. It is frequently convenient both for the parish priest and for members of the Tribunal to have a comprehensive check-list of the various grounds on which a marriage case may be presented to the courts of the Church. Such a check-list is the only adequate guide for an interview with the would-be Petitioner in a marriage case. The canonist, of course, could use such a list without the aid of a questionnaire, but most priests will find it much more satisfactory to interview the prospective petitioner by using a questionnaire built upon the check-list which follows. This listing follows the order of the Code except for Defect of Form cases. Defect of Form is listed first, because it is the most frequent basis upon which marriage cases are tried. In each case the grounds for action will be listed in Latin, then in English.

a. DEFECTUS FORMAE or EX CLANDESTINITATE (Defect of Form; Lack of Form). A special section in this Manual is devoted to Defect of Form cases. The law on the form of marriage has been changed from time to time; a case is judged by the law in force at the time and in the place of the marriage contract. (Cf. the special section of this Manual). Canon 1094 requires that Catholics be married in the presence of the Ordinary or the Pastor (or a delegate of either) and two witnesses. The marriage must take place within the territory of the Ordinary or of the Pastor who assists at the marriage or who delegates another priest to assist at the marriage. Canon 1098 makes exceptions for marriages that take place in periculo mortis or when no authorized priest will be available for a month.

Canon 1099 s 1 states who are bound to the form of marriage, namely, persons baptized in the Catholic Church and all converts. These are bound even

though they fall away from the Church and they are bound even when they marry non-Catholics or Oriental Catholics who are not bound to the form. (It is to be noted that from May 2, 1949 all Oriental Catholics are bound to the form of marriage).

Canon 1099 § 2 sets up an important exemption that was effective until January 1, 1949: if a person was born of non-Catholic parents (i. e. if one parent was a non-Catholic or an apostate), baptized in the Catholic Church, but raised from infancy in heresy, schism or without any religion, such a person was not bound to the form when entering marriage with a non-Catholic. As of January 1, 1949 this exemption was stricken from the Code, so that after that date all persons baptized in the Catholic Church are bound to the form regardless of parentage and regardless of Catholic education. Orientals are not governed by the Latin Code of Canon Law but by their own Code. Prior to May 2, 1949, in the United States, only Ruthenians were bound to the form of marriage. After May 2, 1949 all Catholic Orientals are bound to the form (Cf. the special section in this Manual on Defect of Form).

b. DEFECTUS AETATIS (Non-Age). Canon 1067 requires that the man be sixteen years of age; the woman fourteen years of age. The computation is to be made according to canon 34, § 3, 1^o and, therefore, the marriage is invalid if contracted any time prior to the day after the sixteenth or fourteenth birthday of the man and woman respectively.

c. IMPOTENTIA (Impotency). Incapacitas coeundi invalidates marriage if this condition exists before the marriage and is permanent (canon 1068). The impotency may be absolute (incapacitas coeundi cum qualibet persona) or relative (incapacitas coeundi cum persona cum qua matrimonium contractum est).

d. LIGAMEN (Previous Bond). A person cannot enter a valid marriage while the spouse in a former valid marriage still lives (canon 1069).

e. MORS PRAESUMPTA (Presumed Death). It is frequently difficult to obtain clear-cut proof of the death of a former spouse. Such cases can sometime be settled by the Ordinary on the basis of presumptions. Such cases are governed by the Instruction of the Holy Office of May 13, 1868. (Cf. Bouscaren-Ellis, Canon Law, A Text and Commentary, Bruce: Milwaukee, 1947, p. 474).

f. DISPARITAS CULTUS (Disparity of Cult). The Marriage of a person baptized in the Catholic Church with an unbaptized person is invalid unless a dispensation has first been obtained from the impediment of Disparity of Cult (canon 1070). Oriental Catholics, and even Orthodox Christians are bound by this impediment.

g. DEFECTUS CAUTIONUM (Insincere Promises in a Disparity of Cult Case). Sincere promises to raise the children Catholics and not to interfere with the practice of the religion of the Catholic party are required for the valid granting of a dispensation from the diriment impediment of Disparity of Cult (canons 1071 and 1061, § 1, 2^o). If the promises are insincere, the dispensation is invalid and the marriage, therefore, is invalid. The theory is clear, but there are a few such cases on record. (Cf. THE JURIST, Vol. XIII, Jan. 1953, No. 1, pp. 35-56.)

h. ORDO (Sacred Orders). Major orders render a marriage invalid (canon 1072).

i. VOTA SOLEMNIA (Solemn Vows). Those religious vows, which are recognized by the Church as being solemn vows invalidate marriage (canon 1073; canons 1058, 1308, § 2.)

j. RAPTUS (Abduction). Marriage is invalidated if a man takes a woman by force or detains her by force for the purpose of marriage and marries her while she is in his power (canon 1074).

k. CRIMEN (Crime). The invalidation impediment of crime occurs in three forms:

1. When a person who is bound by a valid marriage commits adultery with another and promises to marry or attempts marriage with this person. This specification of the impediment of crime is frequently encountered: e. g. A marries B then divorces B; A then marries C (the marriage is invalid because of ligamen and also because of crimen); then B dies; A and C go to the priest to have their marriage revalidated; the priest forgets to obtain a dispensation from crimen; the "revalidated" marriage of A and C is still invalid (canon 1075, § 1).

2. When a validly married person commits adultery with another and then one of the adulterers kills the valid spouse. The adulterers are under the impediment of crimen (canon 1075, § 2).

3. Finally, if one of the parties to a valid marriage conspires with a third party to murder his or her spouse. The conspirators fall under the impediment of crimen (canon 1075, § 3). The impediment of crime can be simple or multiple.

l. CONSANGUINITAS (Consanguinity). Marriage is invalidated in all degrees of the direct line of consanguinity and to the third degree of the collateral line inclusive ("second cousins" are related to each other in the third degree). (canon 1076; Cf. also canon 96.)

m. AFFINITAS (Affinity). Marriage is invalidated between a man and his wife's mother or daughter (direct line in all degrees) and vice versa; in the collateral line a man cannot validly marry his wife's sister (1st degree collateral line) or his wife's niece or aunt (2nd degree) and vice versa (canon 1077; Cf. also canon 97).

n. PUBLICA HONESTAS (Public Honesty). A man cannot marry the daughter or granddaughter, the mother or the grandmother of a woman to whom he has been invalidly married or with whom he has lived in notorious concubinage. The converse is also true (canon 1078).

o. SPIRITUALIS COGNATIO (Spiritual Relationship). This impediment exists between the minister and subject of baptism; between the sponsor and god-child (canon 1079; Cf. also canon 768).

p. COGNATIO LEGALIS (Legal Relationship). The legal relationship arising from adoption invalidates a marriage only when state law so specifies (canon 1080). This is an example of the "canonization" of secular law.

q. SIMULATIO TOTALIS (Total Simulation). Consent makes marriage (canon 1081, § 1). In all simulation cases a positive act of the will excluding the marital obligations is required to void the given consent and the marriage (canon 1086, § 2; Cf. also canons 1084-1086). Through the centuries a jurisprudence

has been developed on simulation cases. In order to prove simulation in court, three things must be established: a) a reason for the simulation (causa); b) an admission of the simulation (confessio); c) corroborative circumstances (circumstantiae) which indicate that the simulation took place, e. g. lack of preparations, brief duration of cohabitation, etc.

r. AMENTIA, EBRIETAS (Insanity, Drunkenness). There is no special canon on insanity, drunkenness, etc. Ultimately, however, if these circumstances destroy consent, they destroy the marriage, for "consent makes marriage" (canon 1081, § 1; Cf. Rota decisions on this type of case. Gasparri treats this subject under canon 1082 which deals with ignorance Vol. II, par. 785-787).

s. SIMULATIO PARTIALIS: INTENTIO CONTRA BONUM SACRAMENTI. (Intention against the Indissolubility of Marriage). If one or both parties, by a positive act of the will, exclude the essential element of the indissolubility of marriage, the marriage is invalid. The idea or conviction (in the intellect) that marriage can be dissolved does not affect the validity of the marriage. Only a positive act of the will, ruling out indissolubility, invalidates the marriage (canon 1086, § 2, 1084-1086). In order to prove partial simulation, three things must be established: a) a reason; b) an admission; c) corroborating circumstances. (Cf. supra under Simulatio Totalis.)

t. SIMULATIO PARTIALIS: INTENTIO CONTRA BONUM FIDEI. (Intention Against the Unity or Fidelity of Marriage). If one or both parties exclude by a positive act of the will the essential quality of the unity of marriage, i. e., the exclusive right to marital relations, granted to one party, the marriage is invalid. It is to be noted that a person can assume the obligation to be faithful and yet intend to abuse this obligation by de facto being unfaithful. This would not render the marriage invalid. Marriage is invalidated only by a positive act of the will excluding the transfer of an essential right or the assumption of an essential obligation of marriage. It is necessary, therefore, to distinguish between the positive exclusion of a jus (which invalidates), and the intention to abuse a jus (which does not invalidate). Again three things must be established in order to prove simulation as above under Total Simulation. References to the canons are the same as those given above under s.

u. SIMULATIO PARTIALIS: INTENTIO CONTRA BONUM PROLIS (Intention Against the Right to Natural Relations). Here again a party can assume the obligation and grant the right to normal marital relations and at the same time intend to abuse this right and obligation by practicing birth control. This would not invalidate the marriage. To render the marriage invalid, one or both of the parties must, by a positive act of the will, exclude the fundamental right and obligation to normal marital relations. If a couple de facto never had normal relations, but always practiced artificial birth control, this may serve as a factor to set up a presumption that the right itself was excluded. Such cases are extremely difficult. Jurisprudence requires the concurrence of: a) a cause; b) an admission or confession; c) circumstances -- as indicated above under Total Simulation. The canonical references are the same as given in par. s.

v. EX DEFECTU SCIENTIAE. (Defect of Knowledge). If either party did not even know that marriage is a stable union between a man and a woman for the purpose of having children, the marriage is invalid. Ignorance of this rudimentary concept of marriage is not presumed if the boy is 14 years of age and the girl is 12 years of age (canon 1082; also canon 88, § 2). No knowledge of the manner of procreation is required. As noted above (r), Gasparri takes up drunkenness and insanity under canon 1082 (Vol. II, par. 785-787).

w. ERROR SUBSTANTIALIS: ERROR PERSONAE. (Substantial Error; Error about the Person). If a person thinks that he or she is marrying a certain person, whereas he or she de facto goes through the ceremony with another person, the marriage is invalid (canon 1083, § 1). The classical example is the case of mistaken identity in the instance of identical twins.

x. ERROR ACCIDENTALIS: ERROR QUALITATIS. (Mistake Equivalent to a Mistake About the Person). Bouscaren-Ellis (Canon Law, a Text and Commentary, ed. 1947, p. 502) indicate that there is only an apparent distinction between error substantialis and error accidentalis; "Two sisters look almost exactly alike; John is in love with one of them whom he distinguished . . . chiefly by her blond hair; on the day of the wedding the other sister, having dyed her hair, is substituted for the chosen one, and the matrimonial consent is mutually expressed." The marriage is invalid. (Canon 1083, § 2, 1^o.)

y. ERROR CONDITIONIS. (Error about the Condition of Servitude). If a free person married another thinking this other to be free, whereas the other was a slave in the strict sense of the word, the marriage is invalid (canon 1083, § 2, 2^o).

z. VIS ET METUS (Force and Fear). Not all coercion invalidates marriage. Some harm or evil which is grave, at least as far as the victim of the coercion is concerned, must be unjustly threatened by some person (ab extrinseco), placing the victim in such circumstances that marriage is the only escape. Thus, the coercion must be: 1) grave; 2) unjust; 3) from without; and 4) leave marriage as the only escape (canon 1087). If this coercion is such that consent to the marriage is completely destroyed, it is called absolute violence. However, absolute violence is not necessary to render a marriage, invalid, and, even though reluctant consent is given to the marriage, the marriage is invalid if the coercion is qualified according to the description given above. If the victim of the fear has put himself into the position of deserving the coercive measures brought against him and if the coercion falls within the limits of justice and law, the marriage is not invalidated. (Cf. Chatham "Force and Fear as Invalidating Marriage", Catholic University Press: Washington, D. C., 1950).

aa. CONDITIO ILLICITA DE FUTURO (Future Condition Against the Substance of the Marriage). Treat in conjunction with Total or partial Simulation supra, q-t. (Canon 1092, 2^o, Cf. also canon 1092, 1^o and 3^o.)

bb. CONDITIO DE PRAETERITO VEL PRAESENTI (Condition Concerning a Past or Present Circumstance). If the consent to marriage is given under condition that some past or present circumstance be verified, the marriage is invalid if this circumstance is de facto not verified. In such a case the intention of the party would be: "I marry you if and only if such and such is true" (canon 1092, 4^o).

cc. RATUM NON CONSUMMATUM (Dispensation from Non-Consummated Marriage). Absolutely speaking, marriage reaches the full quality of indissolubility only when both parties are baptized (matrimonium plene ratum) and the marriage is consummated by copula carnalis (canon 1118, 1119). Ad consummationem tria requiruntur: erectio, penetratio, inseminatio.

dd. PRIVILEGIUM PAULINUM (Pauline Privilege). The essentials in a Pauline Privilege case are: at the time of the marriage both parties must have been unbaptized; one party then receives valid baptism; the infidel party "departs"; the convert interpellates the infidel and receives a negative reply. A special section of this Manual deals with Pauline Privilege cases (canons 1120-1124, 1126).

ee. DISSOLUTIO IN FAVOREM FIDEI (Favor of the Faith Case). The requisites in this type of case are: during the entire time of marital association one party must have been unbaptized; one party wishes to become a Catholic; reconciliation is impossible; grave canonical causes. A special section of the Manual deals with this type of case (canon 1120).

16. SOURCE OF INVALIDITY. An important point of law and one that is frequently overlooked is this : it makes a great deal of practical difference whether a diriment impediment derives from the Natural Law or only from the Positive Law of the Church. If an impediment derives from the Natural Law it will affect the baptized as well as the unbaptized. If it derives only from the Positive Law of the Church it will affect only the validly baptized. All baptized persons, whether Catholics or not, are affected by the canonical diriment impediments unless they are expressly exempted as in the case of Disparity of Cult and the Canonical Form of marriage.

17. The following diriment impediments derive from the Natural Law, and, therefore, affect both the baptized and the unbaptized: Defectus Aetatis (if the party is of such tender age as to lack the mental capacity for matrimonial consent); Impotentia; Ligamen; Consanguinitas (in the direct line, and in the first degree of the collateral line according to the best opinion); Simulatio in all forms; Defectus Scientiae; Error Substantialis; Error Qualitatis; Vis et Metus (which is entirely destructive of consent); Conditio Illicita de Futuro; Conditio de Praeterito vel Praesenti.

18. The following diriment impediments derive from the Positive Law of the Church and, therefore, as a general rule and as far as canon law is concerned, invalidate marriage only in the instance of baptized persons: Defectus Formae (non-Catholics are exempted); Defectus Aetatis (unless party is incapable of consent); Disparitas Cultus (non-Catholics exempted); Ordo; Vota Solemnia; Crimen; Consanguinitas (except in direct line and, probably in first degree of collateral line); Affinitas; Publica Honestas; Spiritualis Cognatio; Cognatio Legalis (as a canonical impediment taken over from civil law); Error Conditionis; Vis et Metus (in those degrees which fall short of absolute violence, according to the better opinion).

19. If both parties to a marriage are non-baptized, then, the marriage is governed by the law of the State as well as by the Natural Law. If one party is baptized and one is non-baptized the point can become a difficult question of law that has to be studied in each individual case.

20. CONCERNING THE VALIDITY OF NON-CATHOLIC BAPTISM. On December 22, 1949, the Sacred Congregation of the Holy Office, in reply to a question from a number of Bishops of the United States, replied that in the adjudication of marriage cases, baptism administered by:

The Disciples of Christ,
Presbyterians,
Congregationalists,
Baptists, and
Methodists

must be presumed valid so long as the proper matter and form are used. (THE JURIST, Vol. X, April 1950, No. 2, pp. 235-236).

21. MARRIAGE PRESUMED VALID. A fundamental canon in all marriage cases is canon 1014, which declares that marriage enjoys the favor of the law; therefore, in case of doubt, a marriage must be presumed valid until the opposite is proved. This does not detract from the provision of canon 1127, which provides that in case of doubt, the Privilege of the Faith enjoys the favor of the law.

(Cf. Bouscaren-Ellis, Canon Law, a Text and Commentary, ed. 1947, pp. 565-567).

22. POSSIBILITY OF REVALIDATION. It is possible for a marriage that is invalid from the beginning, subsequently to be revalidated by the cessation of the impediment and renewal of consent (canons 1133-1137). This must be kept in mind especially in the instance of an impediment which ceases with the mere passing of time, such as Non-Age. Such renewal of consent is a very simple matter for those who are not bound to the canonical form of marriage. The positive law of the Church (binding only the baptized) requires that this revalidation take place through a new act of the will, which presumes, therefore, a knowledge of the previous invalidity of the marriage.

vs

Prot. N. _____

PRELIMINARY INTERVIEW WITH PROSPECTIVE PETITIONER

GENERAL QUESTIONS

1. What is your full (maiden) name ?

(If woman) What is your present name ?

Complete address and telephone number ?

Parish Church?

2. Please list all marriages which you have contracted or attempted:

<u>NAME OF OTHER PARTY</u>	<u>DATE OF MARRIAGE</u>	<u>PLACE</u>
----------------------------	-------------------------	--------------

a.
b.
c.
d.
e.

(AT THIS POINT OF THE INTERVIEW EACH MARRIAGE IS TAKEN UP IN TURN AND THE REMAINDER OF THE QUESTIONNAIRE WILL BE FILLED OUT ONLY CONCERNING ONE OF THE MARRIAGES. A SEPARATE QUESTIONNAIRE MUST BE FILLED OUT FOR EACH MARRIAGE CONTRACTED.)

PARTICULAR QUESTIONS

On the marriage of _____ and _____

1. Please give full present name and address of person you married. If deceased, give date and place of death.

2. DEFECTUS FORMAE (Cf. above, "Summary of Substantive Law," § 4, par. 15-a)

Were either you or this party baptized a Catholic? If so, give date and place of baptism; reception of First Communion; of Confirmation; amount of instruction in the Catholic Faith.

Did this marriage take place in the presence of a priest, or was it later "blessed" by the Church?

3. DEFECTUS AETATIS (Cf. above § 4, par. 15-b)

Give exact date of your birth and date of marriage

BORN:

MARRIED:

AGE:

Exact date of birth of the other party?

BORN:

MARRIED:

AGE:

4. IMPOTENTIA (Cf. above § 4, par. 15-c)

Were either you or the other party incapable of marital relations at the time of the marriage? If so, was this condition permanent? What was was the cause of the condition?

5. LIGAMEN (Cf. above, § 4, par 15-d)

Had either you or this party been previous validly married?

If so, was the former consort still living at the time fo this marriage?

Give (maiden) name of former consort; date and place of former marriage or marriages.

Give present name and address of former consorts.

6. MORS PRAESUMPTA (Cf. above, § 4, par. 15-e)

If you claim that your spouse is dead, what proofs can you offer?

7. DISPARITAS CULTUS (Cf. above, § 4, par. 15-f)

Was one party to this marriage baptized in the Catholic or Orthodox Church before this marriage was entered into?

Was the other party unbaptized at the time of the marriage?

Was any dispensation obtained from the authorities of the Catholic Church before the marriage took place?

8. DEFECTUS CAUTIONUM IN MIXED MARRIAGE WITH DISPENSATION FROM IMPEDIMENT OF DISPARITY OF WORSHIP (Cf. above, § 4, par. 15-g)

Did the non-Catholic party sign the promises required by law for a mixed marriage?

Do you have any reason to doubt that this party was sincere in signing these promises? If so, give your reasons:

9. ORDO (Cf. above, § 4, par. 15-h)

Did the man in this marriage ever study for the Priesthood? Was he ordained a Subdeacon?

10. VOTA SOLEMNIA (Cf. above, § 4, par. 15-i)
Was either party to this marriage ever a member of any religious order in the Catholic Church; If so, which order? Was the person dispensed from vows?
11. RAPTUS (Cf. above, § 4, par. 15-j)
Did the man in this marriage take or detain the woman by force in order to bring the marriage about? If so, explain.
12. CRIMEN (Cf. above, § 4, par. 15-k)
If either party to this marriage had been previously married, were there adulterous relations and a promise to marry during the lifetime of the previous spouse?

Was marriage attempted during the lifetime of the previous spouse?

What caused the death of the previous spouse?
13. CONSANGUINITAS (Cf. above, § 4, par. 15-l)
Are the two parties to this marriage blood relations?
If so, explain in detail.
14. AFFINITAS (Cf. above, § 4, par. 15-m)
Was either party to this marriage ever married to a blood relative of the other? If so, indicate relationship.
15. PUBLICA HONESTAS (Cf. above, § 4, par. 15-n)
Did either party to this marriage ever attempt marriage with or cohabit with a blood relative of the other party? If so, indicate relationship.
16. SPIRITUALIS COGNATIO (Cf. above, § 4, par. 15-o)
Did either party to this marriage ever baptize the other or stand as sponsor for the other in baptism?
17. COGNATIO LEGALIS (Cf. above, § 4, par. 15-p)
Are the parties to this marriage related to each other by legal adoption?
18. SIMULATIO TOTALIS (Cf. above, § 4, par. 15-q)
Did both parties to this marriage intend it to be a true marriage?

If not, were all of the rights and obligations of marriage excluded by a positive act of the will? If so, by whom?

What prompted the party to enter marriage with this unusual intention?

Was the matter discussed with anyone? With whom? When?

Are there any letters or documents which discuss this?

Were there any unusual circumstances before, at, or after the marriage? (e. g. quarrels, quick separation.)

19. AMENTIA, EBRIETAS (Cf. above, § 4, par. 15-r)
Was either party demented or drunk at the time of the marriage?

What part did this party have in obtaining the marriage license?

What proofs can be offered concerning the condition of the party?
20. SIMULATIO PARTIALIS: INTENTIO CONTRA BONUM SACRAMENTI
(Cf. above, § 4, par. 15-s)
Was there any divorce agreement prior to the marriage?

Did either party state that the marriage would be only a temporary affair?

Are there any letters or documents to prove that such an intention existed?

What proofs can be offered to show this party had such an intention?
21. SIMULATIO PARTIALIS: INTENTIO CONTRA BONUM FIDEI (Cf. above, § 4, par. 15-t)
At the time of the marriage did either party retain the right to have illicit relations with another in spite of the marriage bond?

Are there any letters or documents to prove such an intention?

What proofs can be offered to show this party had such an intention?
22. SIMULATIO PARTIALIS: INTENTIO CONTRA BONUM PROLIS
(Cf. above, § 4, par. 15-u)
Were any children born of this union?

If no children were born, why was this?

Did either party, before the marriage, exclude the right and obligation of normal marital relations?

Are there any letters or documents to prove that this intention existed?

What proofs can be offered to show this party had such an intention?
23. EX DEFECTU SCIENTIAE (Cf. above, § 4, par. 15-v)
Did both of the parties know that marriage is a stable union between a man and a woman for the purpose of having children?

If either party lacked this knowledge, explain in detail.
24. ERROR SUBSTANTIALIS: ERROR PERSONAE (Cf. above, § 4, par. 15-w)
Did the parties to this marriage know each other prior to the marriage, and recognize each other at the time of the marriage?
If not, explain fully.
25. ERROR ACCIDENTALIS: ERROR QUALITATIS (Cf. above, § 4, par. 15-x)
Was there any element of mistaken identity between the parties at the time of the marriage? If so, explain.

26. VIS ET METUS (Cf. above, § 4, par. 15-z)
Was either party forced into this marriage? Which party?

If so, who brought the force to bear upon this party?

What was the nature of the threats or harm inflicted upon this party?

Had the party who was the victim of this force done anything to cause the agent of the force to threaten or harm him/her?

Could the party who was forced, have escaped by leaving town or in some other fashion? If not, explain why.
27. CONDITIO (Cf. above, § 4, par. 15-aa.bb.)
Did either party enter into this marriage with a formulated condition in mind, such as "I am entering into this marriage only if such and such is the case"? If so, explain.
28. RATUM NON CONSUMMATUM (Cf. above, § 4, par. 15-cc.)
Did the parties to this marriage ever live together?

If not, why not?

Did they ever have marriage relations?

If not, why not?
29. PRIVILEGIUM PAULINUM (Cf. above, § 4, par. 15-dd.)
Were both parties to this marriage unbaptized at the time of the marriage?

Was either party later baptized? If so, which party, when, where and in what religion?

Does the other party remain unbaptized?

Does either party sincerely wish to embrace the Catholic Faith?
30. DISSOLUTIO IN FAVOREM FIDEI (Cf. above, § 4, par. 15-ee.)
Did either one of the parties to this marriage remain unbaptized during entire time of marital association? If so, which party?

Does either party to this marriage sincerely wish to embrace the Catholic Faith?
31. Is RECONCILIATION possible between the parties to this marriage?
If not, why not?
32. To whom are you presently married? (Indicate religion of party).

33. Is this person free to marry you?

34. Has this person ever been married before?

35. If you are not married at the present time, do you wish to marry again?
With whom? (Indicate religion of party.)

HERE THE PRIEST WILL STUDY OVER THE QUESTIONNAIRE AND DECIDE TENTATIVELY WHETHER THERE IS A BASIS FOR THE PRESENTATION OF A MARRIAGE CASE. HE WILL AVOID GIVING THE PARTY ANY HOPE FOR A FAVORABLE SOLUTION, NEITHER WILL HE DISCUSS THE LAW WITH THE PARTY. IT MAY BE WELL FOR HIM TO DISMISS THE PARTY AT THIS POINT AND ASK THE PARTY TO COME BACK AFTER HE HAS HAD TIME TO STUDY THE MATTER. He then indicates:

POSSIBLE BASIS FOR A CASE:

NAMES AND ADDRESSES OF WITNESSES WITH AN INDICATION OF POINTS ON WHICH THEY HAVE PERSONAL KNOWLEDGE. This information can be obtained in a subsequent interview:

Date:

Place:

Parish:

(Signature of Priest)

(ARCHI) DIOECESIS

MANDATUM SPECIALE OFFICIALI CONCESSUM
AD SENTENTIAM DANDAM
IN CASIBUS EXCEPTIS

Ad normam Art. 228 Instructionis "provida Mater Ecclesia" a Sacra
Congregatione de Disciplina Sacramentorum datae die 15 mensis augusti,
1936, hisce praesentibus concedimus et damus:

Reverendo Domino _____

Officiali huius Nostrae (Archi) Dioecesis _____ mandatum
speciale ad hoc ut, Ordinario absente aut impedito, sententiam ferre possit
in casibus exceptis de nullitate matrimonii, nempe in casibus de Defectu
Formae et in casibus de quibus in can. 1990-1992 Codicis Iuris Canonici.

Datum _____ die _____ mensis _____,
anno _____.

ORDINARIUS

NOTARIUS

(sigillum)

(ARCHI) DIOECESIS

MANDATUM SPECIALE OFFICIALI CONCESSUM

AD AUDITORES, DEFENSORES VINCULI ET NOTARIOS CONSTITUENDOS

Cum saepe necesse sit, tum in causis coram Nostro Tribunali
pendentibus, tum in causis in quibus Tribunalia aliena nostrum Tribunal
vocent in auxilium, ut Auditores, Defensores Vinculi et Notari passim
nominentur, quare

Hisce praesentibus concedimus R. D. _____
Officiali Nostro hoc mandatum speciale ad Auditores, Defensores Vinculi et
Notarios eligendos et constituendos etiam pro causis quas ipse non cognoscit.
(Cf. cc. 1580, 1585, 1589, § 1; 1570, § 2)

Datum _____ die _____ mensis _____,
anno 19 ____.

ORDINARIUS

NOTARIUS

(sigillum)

(ARCHI)DIOECESIS

AUDITORIS
CONSTITUTIO: DEFENSORIS VINCULI
NOTARII
CURSORIS

Reverendo Domino:

Per has praesentes litteras te nomino et constituo

AUDITOREM
DEFENSOREM VINCULI
NOTARIUM
CURSOREM

in causa: _____ vs _____

pendente coram Tribunale Dioecesis _____
simulque delegamus quemlibet sacerdotem fruentem facultatibus huius dio-
ecesis ad iuramentum tuum accipiendum.

Datum _____, die _____ mensis _____,
anno 19 ____.

ORDINARIUS
OFFICIALIS
DELEGATUS ORDINarii

NOTARIUS
(sigillum)

IURAMENTUM

Ego infrascriptus spondeo, voveo ac iuro me munus mihi supra con-
cessum sedulo ac diligenter impleturum, munera mihi, etiam sub specie doni
oblata, non recepturum, et secretum officii religiose servaturum in iis omni-
bus quae Sacri Canones aut Superiores secreta servari iusserint, et quando
ex revelatione alicuius actus praeiudicium partibus aut Ecclesiae obvenire
potest. Sic me Deus adiuvet.

Datum in loco _____, die _____ mensis _____,
anno 19 ____.

s/ _____
Testis Delegatus
(Sigillum Curiae vel Paroeciae)

s/ _____

Note: Please take oath; have it witnessed by any priest having the faculties of
the diocese; and return document to Tribunal with testimony.

TRIBUNAL
of

INSTRUCTIONS FOR TAKING TESTIMONY

1. When a priest has been appointed (Auditor, Auditor-Notary, Defender of the Bond, Notary) to hear a witness in a formal trial, he first takes the oath of office before an authorized priest who witnesses his signature, dates it, signs it himself, and affixes the Tribunal or Parochial Seal. When the testimony is for an informal trial or a Pauline Privilege case (and even in Favor of the Faith cases) it is the practice not to require this oath of the priest who has been appointed to take the testimony.

2. If the circumstances are such that it would be practical to summon the witness to appear before the Auditor, the priest writes out a summons which, for validity, must contain all the elements mentioned in canon 1715. This may be sent by registered mail, return receipt requested. A carbon copy should be retained and this should be returned to the Tribunal together with the return-receipt from the Post Office. In most cases, however, the only practical way for the Auditor to obtain the cooperation of a witness will be to call upon the person in his or her home or place of business. This eliminates the necessity of a summons. It has been found from experience that if a witness is first contacted by telephone that he or she will frequently refuse an interview or will, in the meantime, discuss the case with other persons. The better procedure, therefore, is to contact the witness unannounced.

3. When the testimony of a witness is being taken, no one else should be present.

4. The priest may first state the general nature of his business, emphasizing the fact that he has no personal interest in the case and is only trying to help the parties concerned. It would be well to mention, too, that he is interested only in the religious aspects of the matter and not in the law of the State. Finally the party should be assured that the testimony will be held in the strictest confidence.

5. The nature and sacredness of an oath is then explained and the witness is asked to take an oath to tell the truth. If there is a place on the questionnaire for the signature of the witness, the oath is then signed before the testimony is taken. If the party refuses to take an oath, the priest should indicate this on the questionnaire, but the testimony should be taken just the same.

6. If distinct priests act as Auditor, Notary and Defensor Vinculi, the Auditor asks the questions, the Notary records the answers, and the Defensor Vinculi listens and makes timely suggestions to the Auditor. If only one priest is appointed Auditor-Notary he asks the questions and records the answers.

7. Each question is asked carefully, and if it is not understood, it should be rephrased, so that there is no doubt about the meaning. The answer is written down immediately. Simple "yes" or "no" answers are to be avoided and every effort made to obtain a full statement. If an answer throws an adverse light on the case, the priest should try to obtain a full statement of the reasons

for the answer and source of the information. If enough space has not been provided for an answer, extra sheets or the back of the questionnaire should be used, with an indication of where the answer is to continue. If a given question is not asked, the priest should make an annotation as to why it was not asked. The answers are to be written in the first person -- since they represent the responses of a witness. If the drift of the answers indicates the necessity of adding further questions, the Auditor should do this either on his own initiative or at the suggestion of the Defensor Vinculi. If the testimony is taken adequately the first time it will save a great deal of work and may also save the case. Witnesses will frequently refuse to be re-questioned. Few refuse to be questioned one time.

8. At the end of the testimony the answers are re-read to the witness; necessary corrections are made; the oath that the truth has been told is taken; and the testimony is signed by the witness. The priest then dates the testimony and signs it immediately. Later, he affixes the seal of the parish or tribunal.

9. If a witness refuses to testify in writing, the priest should try to obtain an oral statement on the essential point of the case, which he will then report in writing.

10. The priest who takes the testimony should never fail to give his appraisal of the witness; character, credibility, responsiveness, etc. It will be well always to ask for the names and addresses of the two witnesses whom the Court could call upon for character testimonials.

vs

TRIBUNAL
of

Prot. N.

CHARACTER TESTIMONIAL on

1. What is your name?

Address?

Religion?

Occupation?

2. How long have you known _____?

Are you related to this person (if so, state relationship)?

3. What do you think of this person's character and truthfulness?

4. What is the general opinion of those who know this person concerning this person's character and truthfulness?

5. Do you believe that this person handles the truth lightly?

6. Have you ever heard it stated that this person is untruthful?

7. Does this person believe in the sacredness of an oath to tell the truth?

8. Do you think that the statements made by this person under oath, in a matter in which this person may have a great personal interest, can be taken as worthy of full belief?

9. Do you think this person is stating the truth when he/she states (to be filled in if necessary) _____?

10. If you have given a poor reference, please state the reasons.

Please take the following oath: "I solemnly swear that I have told the truth to the best of my knowledge and belief."

Signature of Witness

Signed and sworn in my presence on this the _____ day of _____
19____, at _____.

Signature of Priest

(SEAL OF PARISH)

ACKNOWLEDGMENT OF TESTIMONY
(SAMPLE TEXT)

TRIBUNAL
of

vs.

Dear :

The Bishop of the Diocese of _____ and his
Curia are sincerely grateful to you for your kind assistance in obtaining the
testimony of:

in the case mentioned above. They are happy to place themselves at your
disposal for any service they may be able to render and pray that God will
bless you beyond all measure.

Faithfully in the Lord,

DEFECT OF FORM CASES

DEFECT OF FORM CASES

Special Index

(with brief explanation of each entry)

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2. <u>Policies and Procedure</u>	34
3. THE PETITION (Form: Def. 1)	36
Concerning the Petition it will be well to read the section entitled "DEFECT OF FORM CASES - Policies and Procedure," especially nn. 2-3.	
4. QUESTIONNAIRE FOR THE CATHOLIC PARTY (Form: Def. F. 2)	37
This form is used for the Catholic party in Defect of Form cases. If both parties are Catholic, then the same form is used for both. It would be well to read over the "Summary of the Law" before taking the deposition.	
5. QUESTIONNAIRE FOR THE NON-CATHOLIC PARTY (Form: Def. F. 3)	41
If the Petitioner in a Defect of Form case is a non-Catholic, this form is used. If a non-Catholic Respondent is questioned, this form is also used -- but, in this case, the deposition is less important as is indicated in the section on "Policies and Procedure."	
6. QUESTIONNAIRE FOR WITNESSES (Form: Def. F. 4).....	44
In line with what has been said in the section on "Policies and Procedure", the testimony of witnesses is usually not required in Defect of Form cases. However, witnesses may be necessary, especially if the marriage in question took place before January 1, 1949. Before hearing a witness it would be well to review the section entitled "Summary of the Law."	
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To preclude the possibility of a marriage having been revalidated, it is necessary to check with the Chancery Office of every Diocese in which the parties lived between the time of the marriage and the time of the civil divorce. Information concerning these places of residence will be obtained from the depositions of the parties (Catholic party, q. 28; non-Catholic party, q. 32).	
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Some Tribunals will prefer a Decree of Nullity which states explicitly the proofs upon which the decision is based. However, the form here presented may be of service. Art. 231, § 2 of the Instruction of the Sacred Congregation of Sacraments, given August 15, 1936, enjoins that Defect of Form cases must be subjected to <u>formal proceedings</u> if any doubt remains about the validity of the marriage after the informal proceedings are completed.	

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DEFECT OF FORM CASES

Summary of the Law

A marriage is invalid in virtue of "Defect of Form" or "Lack of Form" when the marriage does not take place in the presence of a priest and two witnesses, in instances in which the law requires that these formalities be observed.

The law on the form of marriage has changed several times in the course of the years. Hence, the exact date of the marriage is always of primary importance. The marriages of Oriental Catholics have to be judged under the provisions of Oriental Canon Law.

Latin Rite

1. For marriages contracted prior to April 19, 1908. The fundamental law was that of the Tametsi decree of the Council of Trent (Cf. Schroeder, Canons and Decrees of the Council of Trent, Herder, 1941, pp. 454-460) as modified by the "Benedictine Privilege" of November 4, 1741 (Cf. Denzinger, nn. 1452-1457)

The Tametsi was binding only where it was published. Outside of areas where the decree had been published no form of marriage was required. Authors state that the Tametsi was published: in the Provinces of New Orleans, San Francisco and Santa Fe; in the Diocese of Vincennes, Indiana; in the city of St. Louis and in a few other towns of that Archdiocese; in a few towns in the Diocese of Alton. This general statement is subject to closer scrutiny in the actual processing of a case.

a. The Tametsi required the presence of the Ordinary or pastor of the domicile or quasi-domicile of one of the parties to the marriage and two witnesses;

b. All baptized persons, Catholics and non-Catholics alike, were bound to the form of marriage by the Tametsi;

c. The "Benedictine Privilege" exempted heretics (baptized non-Catholics) when they married other heretics or Catholics. Therefore:

When a Catholic married a Catholic, they were bound to the form;

When a Catholic married an unbaptized person, they were bound to the form;

When a baptized non-Catholic married an unbaptized person, they were bound to the form;

When a Catholic married a baptized non-Catholic, they were not bound to the form;

When a baptized non-Catholic married a baptized non-Catholic, they were not bound to the form;

All baptized persons, both Catholic and non-Catholic, were bound by the impediment of Disparity of Cult.

2. For Marriages contracted between April 19, 1908 and May 19, 1918. During this period the law concerning the form of marriage was determined by the Ne Temere decree of the Sacred Congregation of the Council (Cf. Codicis Juris Canonici Fontes, Vol. VI. pp. 867-870).

a. The Ne Temere was binding everywhere;

b. It required the presence of the Ordinary or pastor of the place where the marriage was contracted instead of the Ordinary or pastor of the domicile of one of the parties; two witnesses were also required;

c. The Ne Temere was binding upon all persons baptized in the Catholic Faith. No exception was made for children of non-Catholics baptized in the Catholic Faith, but raised outside the Church. On March 31, 1911, however, the Holy Office decreed that cases involving children of non-Catholics, baptized in the Catholic Church but raised outside the Church, should be referred to the Holy Office in each individual case.

d. All baptized persons, Catholic and non-Catholic alike, were bound by the impediment of Disparity of Cult.

3. For marriages contracted between May 19, 1918, and January 1, 1949. During this period the law on the form of marriage was expressed in the Code of Canon law, cc. 1094-1103. Canon 1099 remained unmodified and stated who were bound and who were not bound to the form of marriage;

- a. In general, only Catholics were bound to the canonical form of marriage;

b. One important exception was made: if a person was born of non-Catholic parents (i.e. if at least one parent was a non-Catholic, or an apostate), then, though baptized in the Catholic Church, such a person was exempted from the form of marriage, if ab infantili aetate that person grew up in heresy, schism, infidelity or without any religion. (Cf. Boudreaux, The 'ab acatholicis nati' of Canon 1099, § 2, Catholic University of America Press, Washington, D.C., 1946.)

4. For marriages contracted after January 1, 1949. Effective January 1, 1949, Pope Pius XII modified Canon 1099, § 2 and removed the exception previously granted to the children of non-Catholics. Effective January 1, 1941 all persons baptized in the Catholic Faith are without exception bound to the canonical form of marriage. (Cf. A.A.S., Vol. XL, p. 305; Bouscarren, Canon Law Digest, Vol. III, p. 165.)

Oriental Rites

We are interested in the law of the Oriental Rites only as it affects marriages which take place in the United States. It must be kept constantly in mind that a person inherits his or her Rite from the parents (if the parents are of different Rites, the children belong to the Rite of the father), going back indefinitely. If the ancestors of a person were of Oriental Rite, that person is of Oriental Rite though baptized in the Latin Rite and though all of that person's instructions and the reception of the other sacraments have been in the Latin Rite.

Practically speaking, a person can change Rite only by Apostolic Indult, or, in the case of women, on the occasion of or during marriage to a man of a different Rite, under the provisions of Canon 98, § 4.

When we read Canon 98, § 1, we must keep in mind that it is not the Rite in which a person was de facto baptized which determines the Rite of that person, but rather the Rite in which that person should have been baptized de jure, which determines the Rite of that person.

Whenever a party to a marriage is of Near Eastern or Eastern extraction, the point of Rite must be thoroughly investigated. Cf. Marbach, Marriage Legislation for the Catholics of Oriental Rites in the United States and Canada. The Catholic University of America Press, Washington, D.C., 1946.

The following summary is adopted from a bulletin published by the Diocese of Lansing (it must be noted, however, that this is a difficult point of law, subject to many disputes among the authors);

1. Prior to August 17, 1914: no form was prescribed for the validity of any Oriental marriage, though there was some doubt regarding Ruthenians being bound to the form.

2. From August 17, 1914 to May 2, 1949: The Ruthenians were definitely bound to the form prescribed by the Ne Temere. No other Orientals were bound to the canonical form. During this period, therefore, if a Catholic of Oriental Rite (other than Ruthenian) married a person who was not bound to the form of marriage, the marriage was valid though it took place in the presence of a Justice of the Peace or a Protestant Minister.

3. From May 2, 1949: All Catholics of Oriental Rite are bound to the canonical form of marriage. Cf. Crebrae Allatae, Pius XII, A. A. S., Vol. XVI, 1949.

4. It is to be noted that even when they were not bound to the canonical form of marriage, Oriental Catholics were bound by the impediment of Disparity of Cult. Numerous responses of the Holy See indicate that Orthodox Orientals were also bound by this impediment.

(Concerning the whole question of the form of marriage, cf. Bouscaren-Ellis, Canon Law, a Text and Commentary, Bruce Publishing Co., Milwaukee, 1946 edition, pp. 516-531; 1951 edition, pp. 572-587.)

LACK OF FORM CASES

Policies and Procedure

1. As a general rule, a decree of nullity will not be given until a civil divorce has been obtained.

The usual Lack of Form process is purely administrative in character and does not involve an exercise of judicial power. For this reason policies and procedure may differ widely from Diocese to Diocese; Hence, it is important always to acquaint oneself with the requirements of his Diocesan Chancery or Tribunal.

2. The first step in presenting a Lack of Form case will be the filing of a petition. This petition may be filed by either party to the marriage which is to be declared invalid. A non-Catholic party may be the Petitioner. If the Respondent is a Catholic, every effort should be made to obtain the deposition of this Catholic party. If the Respondent is a non-Catholic, the deposition is of less importance and will be required only in unusual circumstances.

3. The gathering of the necessary documents is the responsibility of the Petitioner who will be assisted by the priest who is sponsoring the case. The following documents will be filed with the Tribunal when the petition is presented:

- a. Certificate of the Baptism of the Catholic party (recent);
- b. An annotation on the certificate of Baptism or a note from the Church of Baptism that there is no record of a valid marriage having been contracted by the party;
- c. Certificate of the First Holy Communion of the Catholic party;
- d. Certificate of the Confirmation of the Catholic party;
- e. Certificate of the marriage to be declared invalid (this may be obtained from the court house of the county or civil parish where the marriage took place);
- f. Certified copy of the decree of civil divorce (this may be obtained from the court house of the county or civil parish where the divorce was granted);
- g. Cf. n. 5 below.

N. B. If the marriage took place on or after January 1, 1949, Only Baptism in the Catholic Church is necessary to bind a person to the form, hence Communion and Confirmation records are not necessary. If both parties to the marriage were Catholics, the certificates of Baptism, First Communion and Confirmation of either party may be used in establishing invalidity.

4. If the marriage took place before January 1, 1949, and First Communion and/or Confirmation certificates are not available, it is necessary to prove either:

- a. That one of the parties to the marriage was a baptized Catholic, born of two Catholic parents; or,
- b. One of the parties was sufficiently educated in or identified with the Catholic Church to be bound to the form of marriage (cf. qq. 31-45 in Questionnaire for Catholic party);
- c. In each instance it will be necessary to obtain the sworn testimony of two reliable witnesses. In all other Defect of Form cases the testimony of witnesses will not be required.

5. In every case it will be necessary to check with the Chancery Office of every diocese in which the couple lived between the time of the attempted marriage and the time of the civil divorce. The purpose of this check is to prove that the marriage was not revalidated. Inquiry, therefore, is made concerning any dispensation or sanatio in radice that may have been granted in favor of the parties. If the parish priest makes this check, he should use the forms provided by the Tribunal and will submit these documents to the Tribunal along with the other documents in the case. Information concerning the places where the parties have resided will be obtained from the deposition of the parties.

6. Ar. 231, § 2 of the Instruction of the Sacred Congregation of Sacraments (August 15, 1936) explicitly requires that Lack of Form cases must be subjected to full formal proceedings in the event that the informal process does not clear up all doubt about the invalidity of the marriage.

7. In the Province of New Orleans the expenses of the Tribunal for a Lack of Form case is \$5.00, to be paid by the Petitioner when the petition is filed. If the Petitioner is unable to pay these expenses, the Pastor will write a note of explanation to the Tribunal.

8. The Tribunal will conclude each case as quickly as possible. However, no priest should ever make plans to assist at a subsequent marriage of either party in a marriage case until a decree of nullity has been obtained.

PETITION
LACK OF FORM CASE

To: His Excellency,

(name of Ordinary)_____
(name of Diocese)

Your Excellency:

1. I, the undersigned, respectfully request a declaration of nullity in the instance of a marriage contracted outside the Catholic Church, on the basis of Defect of Canonical Form. One of the parties to this marriage, namely;

(name of party bound to form of marriage)

was obliged to be married in the presence of a Priest, whereas the marriage was not performed by a Priest, neither was it subsequently re-validated by the authorities of the Catholic Church.

2. I respectfully submit the following information:

PETITIONEROTHER PARTY_____
(name; maiden name, if woman)_____
(name; maiden name, if woman)_____
(present name)_____
(present name)_____
(present street address)_____
(present street address)_____
(city and state)_____
(city and state)_____
(ecclesiastical parish)_____
(parish, if known)_____
(religion)_____
(religion)

3. This marriage took place on _____ (date),
in _____ (Place of marriage), in the presence
of _____ (Minister or Justice of the Peace).

4. I enclose the following:

- a. Recent certificate of Baptism of Catholic party;
- b. Note from Pastor of Church of Baptism that he has no annotation of a valid marriage;
- c. Certificate of First Communion; or
- d. Certificate of Confirmation;

(Note: If marriage took place on or after January 1, 1949, records of Communion and Confirmation are not necessary.)

- e. Certificate of civil marriage;
- f. Certified copy of decree of civil divorce;
- g. Five dollars (\$5.00) to defray the expenses of the Tribunal.

Given at _____ this the _____ day of _____,
19____.

Signed: _____
(use maiden name, if woman)

TO BE FILLED IN BY PRIEST

1. Report on character and credibility of Petitioner:

2. If Petitioner cannot pay the expenses of \$5.00, please explain:

3. Please check the following items if they have been obtained:

- A. Deposition of Petitioner: _____; B. Deposition of Respondent _____;
C. Testimony of Witnesses: _____; D. Check of Chancery files for
possible dispensation or sanation: _____.

Date: _____

Signed: _____

Place: _____

Pastor/Assistant

(Seal of Church)

vs.

Prot. N.

TRIBUNAL

LACK OF FORM CASE
QUESTIONNAIRE FOR THE CATHOLIC PARTY, PETITIONER OR RESPONDENT

NAME OF PARTY: _____

(maiden name, if woman)

ADDRESS :

OATH OF PARTY: I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

1. What is your full name (maiden name, if woman)?
2. What is your address (P.O., Street, City, **State**)?
3. When and where were you born?
4. What are the names of your parents?
Father: _____ Address: _____
Mother: _____ Address: _____
5. What is the religion of your parents at the present time?
Father: _____ Mother: _____
6. What was the religion of your parents at the time of your birth?
Father: _____ Mother: _____
7. Was your father, or either of his parents, of Oriental or Near Eastern extraction (if so, please give specific details)?
8. Did your father, or either of his parents, belong at any time to an Oriental Rite of the Catholic Church (for example, Ruthenians, Syrians, Maronites, Melchites, Greeks, Italo-Greeks, etc.)?
9. Was your mother, or either of her parents of Oriental or Near Eastern extraction?
10. Did your mother, or either of her parents, belong at any time to an Oriental Rite of the Catholic Church?
11. When, where and in what Church were you baptized?
12. Did you make your First Holy Communion in the Catholic Church?
Name of Church: _____ Date: _____ Place: _____
13. Were you Confirmed in the Catholic Church?
Name of Church: _____ Date: _____ Place: _____
14. Whom did you marry outside the Catholic Church (name of respondent; maiden name, if woman)?

15. What is the present name and address of this party?
16. What was the religion of this party at the time fo the marriage?
What is the religion of this party at the present time?
17. Has this party been baptized in any religion?
Church: _____ Date: _____ Place: _____
18. When, where and before whom did this marriage take place?
Date: _____ Place: _____ Before whom: _____
19. Why did you not have the marriage performed by a Priest?
20. At the time fo the marriage, could you have easily approached a Priest about performing the ceremony if you and your consort had wished to do so?
21. If no priest was available, how long did you expect this condition to last (explain in detail)?
22. Did you ever speak to a Catholic Priest about your marriage (if so, give name of priest, place and date of conversation)?
23. What did he advise?
24. Did you follow his advice?
25. Did you obtain any dispensation in connection with this marriage, such as from announcing the banns, or a dispensation permitting you to marry a non-Catholic?
26. Did you or the other party ever make any attempt to have this marriage "blessed" or revalidated under extraordinary circumstances, such as in time of serious illness (if so, explain in detail)?
27. Has a civil divorce been obtained?
Date: _____
County (civil parish) and State: _____
28. Please indicate all the places in which you have lived between the time of this attempted marriage and the granting of the civil divorce.

<u>PLACE OF RESIDENCE</u>	<u>DATES:</u> <u>FROM</u>	<u>TO</u>
---------------------------	---------------------------	-----------
29. Please indicate all marriages contracted by you, giving information listed below.

<u>TO WHOM</u>	<u>DATE</u>	<u>PLACE</u>	<u>BEFORE W</u>
----------------	-------------	--------------	-----------------

30. Please indicate all marriages contracted by the other party.
- | <u>TO WHOM</u> | <u>DATE</u> | <u>PLACE</u> | <u>BEFORE WHOM</u> |
|----------------|-------------|--------------|--------------------|
|----------------|-------------|--------------|--------------------|

NOTE TO PRIEST: Questions 31 to 45 will be asked only if the marriage was contracted before January 1, 1949, and if it has been impossible to establish the Catholicity of at least one of the parties by the certificate of First Holy Communion or Confirmation.

31. Were your parents married by a Catholic Priest?

Date:

Place:

32. Were any of your brother or sisters baptized or instructed in the Catholic Religion (if so, give details)?

33. Did either or both of your parents ever apostatize from the Catholic Church or join any non-Catholic religion (if so, give details, especially dates)?

34. Please indicate all the instruction that you received in the Catholic Religion prior to the above marriage, whether this instruction took place at home, in Church, at school or in any other place.

DATES OF INSTRUCTION

PLACE

NAME OF INSTRUCTOR

35. List all school which you have attended.

NAME OF SCHOOL

PLACE

DATES OF ATTENDANCE

36. Did you take instructions in the Catholic religion at any of these schools (if so, give details)?

37. Before you attempted marriage, did you attend Holy Mass?

CHURCH

PLACE

YOUR AGE AT TIME

FREQUENCY

38. Did you pay close attention to the sermons and instructions given during Mass?

39. At the time of the above marriage did you know the essential Catholic prayers and beliefs (if so, explain which prayers you knew and your knowledge of Catholic beliefs and practices)?

40. Give the names and addresses of witnesses who can testify concerning your instruction in the Catholic Religion, your Catholic practices and your knowledge of Catholic prayers and beliefs prior to your attempted marriage?

NAME

ADDRESS

POINT OF INFORMATION

41. Prior to the above marriage, did you consider yourself a Catholic?
42. Prior to this attempted marriage, were you considered a Catholic by others?
43. Give names and addresses of witnesses who were familiar with your religious convictions and reputation prior to your marriage.
44. Did you ever attend non-Catholic services or instructions (if so, explain)?
45. Did you ever join any non-Catholic Church (if so, give details)?

HERE TESTIMONY IS READ TO PARTY. THEN PRIEST ASKS:

46. Is reconciliation possible between you and the other party in this case (give reasons for answer)?
47. Have you anything to add, delete or change in your testimony?

HERE WITNESS TAKES THE FOLLOWING OATH: "I solemnly swear that I have told the truth and nothing but the truth in answer to the foregoing questions, so help me God and these His Holy Gospels which I touch with my hand. "

Signed: _____
(signature of party; maiden name
if woman)

Sworn and signed in my presence on this the _____ day of _____,
19 _____ at _____.

Signed: _____
AUDITOR-NOTARY

(SEAL OF CHURCH)

Prot. N.

TRIBUNAL

LACK OF FORM CASE

QUESTIONNAIRE FOR THE NON-CATHOLIC PARTY, PETITIONER OR
RESPONDENT

NAME OF PARTY:

(maiden name, if woman)

ADDRESS

:

OATH OF PARTY: I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

1. What is your full name (maiden name, if woman)?
2. What is your address (P. O., Street, City, State)?
3. When and where were you born?
4. What are the names of your parents?
Father: Address:
Mother: Address:
5. What is the religion of your parents?
6. What is your religion?
7. Were you ever baptized, christened or sprinkled in any religion?
Church: Place: Date:
8. Were you married to _____?
(name of Catholic party; maiden name, if woman)
9. When, where and before whom (Justice of Peace or Minister) did this marriage take place?
Date Place: Before Whom:
10. At the time of this marriage could you have easily approached a Priest about performing the ceremony if you and your consort had wished to do so?
11. If no priest was available, how long did you expect this condition to last (explain in detail)?

30. Please list all marriages contracted by you:
TO WHOM DATE PLACE BEFORE WHOM

31. Please list all marriages contracted by the other party in this case:
TO WHOM DATE PLACE BEFORE WHOM

32. Please list all the places in which you lived between the time of
your attempted marriage to the party now in question and the time
of your civil divorce from this party.
PLACE DATES OF RESIDENCE: FROM TO

33. Is reconciliation possible between you and the other party to this
case (give reasons for answer)?

HERE TESTIMONY IS READ TO PARTY. THEN PRIEST ASKS:

34. Have you anything to add, delete or change in your testimony?

HERE WITNESS TAKES THE FOLLOWING OATH: "I solemnly swear
that I have told the truth and nothing but the truth in answer to the fore-
going questions, so help me God and these His Holy Gospels which I
touch with my hand."

Signed: _____
(Signature of party; maiden name
if woman)

Sworn and signed in my presence on this the _____ day of _____,
19____.

Signed: _____
AUDITOR - NOTARY

(SEAL OF CHURCH)

TRIBUNAL

Prot. N.

DEFECT OF FORM CASE
QUESTIONNAIRE FOR WITNESSES

NAME OF WITNESS: _____

ADDRESS : _____

OATH OF WITNESS: "I solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand."

1. What is your full name and address?
2. Can you produce some means of identification (Priest indicates means of identification such as social security card, driver's license, personal acquaintance, etc.)?
3. What is your religion?
4. Do you know _____ (name of party whose Catholicity is to be investigated) who, at one time, married _____ (name of other party)?
5. How long have you known _____ (name of party whose Catholicity is to be investigated)?
6. Are you related to this party (if so, specify)?
7. What is the name and address of the natural father of this party?
8. What was his religion at the time of the birth of _____ ?
9. What religion did the father practice at that time?
10. Was he, or either of his parents, of Eastern or Near Eastern extraction, such as Ruthenian, Syrian, Greek, Italo-Greek, etc.?
11. What is the name and address of the natural mother of _____ ?
12. What was her religion at the time of the birth of _____ ?
13. What religion did the mother practice at that time?
14. Was she, or either of her parents, of Eastern or Near Eastern extraction, such as Ruthenian, Syrian, Greek, Italo-Greek, etc.?

15. Were the natural parents of _____ married
before a Catholic Priest?
Place: _____ Church: _____ Date: _____
16. Please indicate the source of the information that you have given
in reply to questions 8-15 concerning the religion and background
of the parents of the party in this case.
17. Was _____ (name of party whose
Catholicity is being investigated) baptized, christened or sprinkled?
DENOMINATION NAME OF CHURCH PLACE DATE
18. Explain the source of your information on this point.
19. In what religion was _____ brought up?
20. Has this always been the religion of this party?
21. Did this party ever attend any Catholic Schools?
NAME OF SCHOOL PLACE DATES OF ATTENDANCE
22. Did this party ever attend instructions in the Catholic Religion?
PLACE INSTRUCTORS DATES OF INSTRUCTION
23. Please indicate the source of the information you have furnished in
reply to questions 19-22.
24. Did _____ ever receive Holy Com-
munion in the Catholic Church?
PLACE NAME OF CHURCH DATE
25. Did this party receive the Sacrament of Confirmation in the
Catholic Church?
PLACE NAME OF CHURCH DATE
26. Please give the source of the information you have furnished in
reply to questions 24-26.
27. Did _____ attend Holy Mass on Sun-
days and Holy Days of obligation prior to the attempted marriage
with _____ ?
PLACE OF ATTENDANCE CHURCH FREQUENCY

28. Did _____ know Catholic prayers and practices prior to this marriage (if so, explain in detail)?
29. Did this party consider himself or herself a Catholic prior to this attempted marriage?
30. Did other people consider this party a Catholic prior to this attempted marriage?
31. Please explain the source of the information you have furnished in reply to questions 28-30.
32. In your opinion was this party to be considered a Catholic prior to the attempted marriage in question (give reasons for answer)?
33. Did _____ ever attend any Church or receive religious instructions in any Church other than the Catholic Church?
34. Did this party ever join any Church other than the Catholic Church?
35. Can you give the names and addresses of persons who can give information concerning the religious convictions, practices and education of this party?
36. Is reconciliation between _____ and _____ possible (give reasons)?

HERE PRIEST READS TESTIMONY TO WITNESS AND ASKS:

37. Have you anything to add, delete or change in your testimony?

THEN WITNESS TAKES THE FOLLOWING OATH: "I solemnly swear that I have told the truth and nothing but the truth in answer to the foregoing questions, so help me God and these His Holy Gospels which I touch with my hand."

Signed: _____
(signature of witness)

Sworn and signed in my presence on this the _____ day of _____, 19____ at _____.

Signed: _____
(SEAL OF CHURCH) AUDITOR-NOTARY

(Priest later adds character reference and impressions of witness)

CHARACTER REFERENCE

Date: _____ Place: _____
Signed: _____
(SEAL OF CHURCH) AUDITOR-NOTARY

vs

Prot. N.

TRIBUNAL

TO:

19

Dear

In a marriage case under consideration our diocese, _____, a member of the _____ Faith, claims that a marriage attempted with a member of the _____ Faith was null and void from the beginning because of Defect of Canonical Form.

The parties in question resided within the confines of your diocese at _____ from _____ to _____.

It will be deeply appreciated if you will check your records for a possible dispensation or sanatio in radice in this case. If any dispensation or sanatio was granted in this case, kindly furnish our office with an authentic copy of the same.

While we thank you in advance for your kind assistance in this matter, we wish to assure you of our desire to reciprocate at any time.

Sincerely in Christ,

REPLY

The Chancery Office:

19

Dear

A careful search of the files of this Chancery reveals that pertinent dispensation _____ sanatio was granted to the parties named above. The search extended from _____ to _____.

(SEAL

vs.

Prot. N. _____

TRIBUNAL

IN NOMINE DOMINI. AMEN.

Cum Nobis, ex certis et authenticis documentis, ad normam Canonum 1094-1099, et iuxta Instructionem "Provida", a S. C. de disciplina Sacramentorum die 15 Augusti anno 1936 datam, evidenter constet matrimonium attentatum inter:

_____ et _____
coram _____ in loco _____,
die _____ mensis _____, anno _____, ob defectum formae esse nullum, Nos illud invalidum irritumque coram Deo et Ecclesia esse declaramus.

Quapropter, servatis de iure servandis, et nullo alio obstante impedimento, licentiam partibus in casu damus ad alias coram Ecclesia nuptias convolandi.

Datum, _____, hac _____ die, mensis _____, 19 _____.

Notarius

(SIGILLUM)

LIGAMEN CASES

LIGAMEN CASES

Special Index (with brief explanation of each entry)

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2. THE PETITION (Form: Lig. 1)	56
<p>The Petition form is set up to suit the usual case, namely, in which the Respondent is the party who was bound by a single previous marriage. If a given case departs from this usual pattern, the Petition will have to be modified accordingly. In complicated cases, before taking any action, it would be better for the Priest to write to the Tribunal, giving information in as much detail as possible. It is primarily the obligation of the Petitioner to collect the necessary documents and to furnish the names of necessary parties and witnesses. The Petitioner will be assisted in this by one of the Priests of the parish. If a given document or address cannot be obtained, this should be indicated in the Petition; in such cases it is possible that the necessary information will come to light during the process.</p>	
3. QUESTIONNAIRE FOR THE PETITIONER (Form: Lig. 2)	58
<p>Before taking the deposition of the Petitioner, the Priest should be appointed Auditor-Notary.</p>	
4. QUESTIONNAIRE FOR PARTIES TO FIRST MARRIAGE (Form: Lig. 3)	60
<p>In every Ligamen Case one marriage is to be declared invalid because there was a previous marriage in the way. This previous marriage sets up the <u>ligamen</u>. This questionnaire is designed for the two parties to this previous marriage. One of these parties will almost always be the Respondent in the case of the marriage to be declared invalid. If the case is to be successful it will have to be shown that the first marriage was a valid marriage. If any answer causes the Priest to doubt about the validity of this first marriage, he should inquire more closely on the point, adding questions in order to obtain all pertinent details. Unless the testimony is taken adequately on the first hearing -- it may prove fatal to the case, as non-Catholics will sometimes refuse to testify a second time.</p>	
5. QUESTIONNAIRE FOR WITNESSES (Form: Lig. 4)	63
<p>This questionnaire is designed for witnesses who know either or both parties to the original marriage which sets up the <u>ligamen</u>. The best witnesses will normally be members of the family of one of the parties. A given witness may know both of the parties well enough to testify concerning the freedom of both at the time of the first marriage. If, in the course of the questioning, a witness raises any doubt about the validity of the first marriage, the Priest should add questions and try to obtain all pertinent details.</p>	

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6. CITATION OF THE RESPONDENT: to be delivered by the Court Messenger (Form: Lig. 5)	66
Cf. the section entitled "LIGAMEN CASES -- <u>The Law; Policies and Procedure</u> ," n. 11 where the citation or summons is discussed. This form has been prepared for cases in which the citation or summons will be delivered by the Court Messenger according to the provisions of Canons 1717-1718.	
7. CITATION OF THE RESPONDENT; to be sent by registered mail (Form: Lig. 6)	68
This form is prepared for the case in which the citation will be sent by registered mail, <u>return receipt requested</u> , under the alternative allowed by Canon 1719.	
8. CITATION OF THE RESPONDENT: to be posted and/or published (Form: Lig. 7)	69
This form is prepared for use in cases in which the Tribunal avails itself of the alternative permitted by Canon 1720. The citation is posted on the doors of the Chancery and/or published in the (Catholic) press.	
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The Law; Policies and Procedure

1. In every Ligamen Case the situation will be similar to this: Titius, who has never been married before, attempts marriage with Caia who had been previously married to Primus. Titius and Caia then separate (and obtain a civil divorce) and Titius now wishes to enter a valid marriage. Titius petitions that his marriage to Caia be declared invalid on the basis of ligamen, namely, because Caia was bound by the bond of a previous valid marriage to Primus.

2. Canon 1069, § 1. "Invalide matrimonium attentat qui vinculo tenetur prioris matrimonii, quamquam non consummati, salvo privilegio fidei."

3. Canon 1069, § 2 makes the very wise provision that a person who has attempted marriage with a previously married party may not enter a second marriage until the attempted marriage has been officially declared invalid. The Parish Priest cannot settle Ligamen Cases on his own judgment. Every case must be submitted to the Tribunal.

4. Ligamen Cases are handled informally by the Tribunal under the provisions of Canon 1990. It is not sufficient to produce only a certificate of previous marriage; further proof is necessary. For example, in the case mentioned above (n. 1), it is not sufficient to produce a certificate of the marriage of Caia to Primus, for the simple reason that the marriage of Caia to Primus could have been an invalid marriage. For this reason it is absolutely necessary to corroborate the validity of the first marriage in each individual case. This is done by taking the deposition of the parties to the first marriage and the testimony of witnesses who knew these parties.

5. The first step in a Ligamen Case is for one of the parties to the marriage which is to be declared invalid to file a Petition for a declaration of nullity. This Petition must be filed with a Tribunal that has JURISDICTION over the case. Canon 1964 gives the ordinary rules of jurisdiction. A case is to be tried by the Tribunal of that Diocese:

- a. In which the marriage to be adjudicated was contracted; or,
- b. In which the Respondent has domicile or quasi-domicile. Or,
- c. If one party to the marriage was a Catholic and the other a non-Catholic, the case is to be tried by the Tribunal of that Diocese in which the Catholic party has domicile or quasi-domicile.
- d. If both parties to an informal case are non-Catholics, Beste (Introductio in Codicem, p. 871 in medio) points out that the competent Ordinary will be the Ordinary of the Catholic whom the Petitioner in the case wishes to marry. He quotes several prominent canonists who hold this position and makes reference also to a decision of the Holy Office of June 23, 1903 (Codicis Juris Canonici Fontes, Vol. IV, n. 1266). It seems, however, that we may hold that this opinion would not exclude the simultaneous jurisdiction of an Ordinary who is competent under the provisions of Canon 1964.

6. As a matter of practical conclusion, a non-Catholic may be the Petitioner in a Ligamen Case. The ordinary rule is that a non-Catholic may not be the Petitioner in a marriage case. However, reliable canonists restrict this limitation to formal cases. (Cf. Beste, Introductio in Codicem, pp. 852-853.) This opinion is strengthened by the so-called "Harrisburg Decision" in which the Holy Office informed the Bishop of Harrisburg that a non-Catholic could be the petitioner in a Disparity of Cult case. (Bouscaren, Canon Law Digest, Vol. II, pp. 552-553.)

7. It is the responsibility of the Petitioner to obtain the necessary documents (not testimony) in each case. The Petitioner will be assisted by the Pastor or Assistant who sponsors the case. The following documents are to be sent to the Tribunal when the Petition is filed:

- a. Certified copy of certificate of marriage to be declared invalid.
- b. Certified copy of decree of civil divorce in instance of marriage to be declared invalid.
- c. Certified copy of the certificate of the previous marriage which sets up the ligamen.
- d. Certified copy of the decree of civil divorce in the instance of this previous marriage. These documents can be obtained from the courthouse of the county of civil parish where the marriage was contracted or the divorce obtained.

8. It is also the responsibility of the Petitioner to supply the Tribunal with the names and addresses of parties and witnesses whose testimony will be necessary. As a general rule it will be necessary to hear both parties to the original marriage and two witnesses on each of these parties. If it is impossible to obtain the testimony of both parties to the original marriage, it may be possible to settle the case with the deposition of only one of the parties, if the testimony of the witnesses is adequate. In these circumstances, however, the testimony of an additional witness should be obtained if possible. Members of the immediate family of the parties are the best witnesses, but others are not excluded. The point is: to get the testimony of two witnesses (for each party) who are in a position to testify that the original marriage was a valid marriage.

The names and addresses of the following must be submitted to the Tribunal:

- a. The Petitioner;
- b. The Respondent;
- c. The other party to the first marriage which sets up the ligamen;
- d. Two witnesses who knew each of the parties to the first marriage.

10. Before taking the testimony of a party or a witness the Priest must obtain his appointment as Auditor-Notary (Cf. section on "GENERAL FORMS"). No effort should be made to interrogate witnesses except on the forms supplied by the Tribunal.

11. Canon 1990 requires that the parties to an informal case be summoned before a final decision is reached. Canon 1711, § 2 provides that if the parties appear of their own volition that the summons is not necessary. On the basis of this provision, if the Respondent in a Ligamen Case freely testifies to an Auditor-Notary and is advised at that time that judicial action will be taken on the case, as a matter of local policy, it will not be necessary to summon the Respondent. The same applies to

the summoning of the Petitioner. In all other instances a summons or citation must be served upon the parties in accordance with the provisions of Canons 1712-1723.

12. The Petitioner in a Ligamen Case is expected to make an offering (twenty-five dollars in the Tribunals of the Province of New Orleans) towards the expenses of the Tribunal. This should be done when the Petition is filed. If the Petitioner cannot pay these expenses in whole or in part, the Pastor should write a note of explanation to the Tribunal.

13. Canon 1990 requires the intervention of the Defensor Vinculi in informal cases. Therefore before the sentence is given in a case, the Defensor Vinculi will make a careful study of all the documents and testimonies. He will then write his "Animadversions" on the case. It is his prerogative to question the authenticity of documents and the cogency of all proofs that have been gathered. These Animadversions will be made a part of the file on the case and will be given careful consideration by the Judge before reaching a decision. At the insistence of the Defensor Vinculi, the judge may see fit to require additional clarifications and proofs before reaching a decision.

14. In 1990 cases, the Ordinary himself will render the sentence. However, if the Ordinary is absent or otherwise impeded, the Officialis, in virtue of a special mandate from the Ordinary, can pass judgment on informal cases. (Cf. Sacra Congregatio de Disciplina Sacramentorum, -- Instructio, "Provida Mater Ecclesia", 15 Aug. 1936, art 227 sq.; A.A.S., XXVIII, 313 sq.)

15. In a letter to the Bishops of the United States (No. 27/46), dated June 10, 1948, the Apostolic Delegate pointed out that, in order to render a decree of nullity in 1990 cases, a higher degree of certitude is required in the mind of the Judge than the "moral certitude" that is demanded in formal cases treated by a collegiate Tribunal.

"Attention is called to the fundamental requirement for the excepted case, viz., that to act according to the summary procedure there must be documentary proof quod nulli contradictioni vel exceptioni obnoxium sit (Canon 1990). Moreover, there must be par certitudo in deciding that a dispensation has not been granted. In a word, such certitude is demanded as excludes even a shadow of doubt. When there is any kind of doubt, the matter may always be referred to the Sacred Congregation of the Sacraments.... (Canon 249 § 3)."

If such a case is to be referred to Rome, we might add that the competent authority will be the Holy Office if one of the parties to the marriage was a non-Catholic. (S. Sacra Congregatio S. Officii, 27 Jan. 1928; A.A.S. XX, 75 -- Apud Beste, Introductio in Codicem, pp. 851-852).

16. Canon 1991 provides that the Defensor Vinculi may appeal to the Ordinary of the Court of Second Instance if an affirmative decision is rendered, and, in his prudent judgment, such a decision is not justified.

17. Art. 229, § 2 of the Instruction of the Sacred Congregation of the Sacraments ("Provida", Aug. 15, 1936) likewise permits the Petitioner to appeal to the Ordinary of the Court of Second Instance if a negative decision is rendered in a case.

18. Art. 230 of the same Instruction indicates that in cases of such appeal, the Court of Second Instance will decide whether the decision of the first court is to be confirmed or whether the case will have to be remanded to the Court of First Instance to be tried under formal procedure.

Prot. N. _____

PETITION: LIGAMEN CASE

To: His Excellency,

(name of Ordinary)

(name of Diocese)

Your Excellency:

1. I, the undersigned:

(full name of Petitioner; maiden name, if woman)

(full present address)

a _____ (indicate Religion), respectfully request a
declaration of nullity in the instance of the marriage attempted by me with:

(full name of Respondent; maiden name, if woman)

a _____ (indicate Religion).

2. This marriage was attempted:

on: _____

(date of attempted marriage)

at: _____

(place of attempted marriage)

before: _____

(Minister or Justice of Peace)

3. The present name and address of the Respondent are:

(present name of Respondent)

(Street and number)

(City and State)

4. This petition is based upon the fact that the Respondent was
bound by a previous valid marriage contracted with:

(full name of Respondent's first spouse; maiden name)

(present name and address of Respondent's first spouse)

5. The Respondent's first marriage was contracted:

on: _____

(date of Respondent's first marriage)

at: _____

(place of Respondent's first marriage)

6. I submit the names and addresses of two persons who knew the
Respondent well at the time of the Respondent's first marriage and who
can testify that this was a valid marriage:

(name of witness)

(address of witness)

(name of witness)

(address of witness)

7. I also submit the names and addresses of two persons who knew the first spouse of the Respondent well and who can testify to the validity of this marriage:

_____	_____
(name of witness)	(address of witness)
_____	_____
(name of witness)	(address of witness)

(N.B. The names of parents, older brothers or sisters, immediate relatives or intimate friends are preferred as witnesses. Others are not excluded, however, and if the same two witnesses knew both parties, two witnesses may suffice for both.)

8. I enclose the following:

- a. Certificate of marriage to be declared invalid;
- b. Certified copy of decree of divorce on this marriage;
- c. Certified copy of certificate of Respondent's first marriage;
- d. Certified copy of decree of divorce in the instance of this first marriage;
- e. Twenty-five dollars (\$25.00) to help defray the expenses of the Tribunal in this case.

Given at _____ on this the _____
day of the month of _____, 19_____.

Signed: _____
(Petitioner; maiden name if woman)

(Petitioner; present name if different)

TO BE FILLED IN BY PRIEST

1. Report on character and credibility of Petitioner:

2. If Petitioner cannot pay expenses of \$25.00 please explain:

Signed _____
Pastor/Assistant

Date:

Place:

Parish:

(Seal of Church)

vs.

Prot. N. _____

TRIBUNAL

LIGAMEN CASE: QUESTIONNAIRE FOR THE PETITIONER

Name of Petitioner: _____

Address : _____

OATH OF PETITIONER: "I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand."

1. What is your full name (maiden name, if woman)?
2. What is your address (P.O., Street, City, State)?
3. What is your occupation?
4. Have you any means of identifying yourself (Priest indicates means of identification such as: driver's license, social security card, personal acquaintances, etc.)?
5. What religion do you profess?
6. Are you, or have you ever been a Catholic?

If so, when and where were you baptized?

7. If you have never been a Catholic, were you ever baptized, christened or sprinkled in any religion?

If so, in what religion, when and where?

8. Whom did you marry (please list ALL marriages chronologically)?

NAME OF OTHER PARTY

DATE

PLACE

BEFORE WHOM

(NOTE TO PRIEST: If the Petitioner entered several marriages, please repeat questions 9 to 19 for each marriage. Use a separate sheet of paper for these questions on each marriage, and change the phrase "first marriage" to "second marriage," etc.)

9. Which was your first marriage? Give name of other party; maiden name, if woman:

Present name and exact address of this party:

10. Was this party ever baptized, christened or sprinkled in any religion?
Church: _____ Date: _____ Place: _____

11. Was this party ever a Catholic?

12. What religion did this party profess at the time of your marriage to this party?

13. Please list chronologically ALL marriages contracted by this party.
TO WHOM DATE PLACE BEFORE WHOM

14. Which was this party's first marriage?

15. How do you know this?

16. When you married: _____
(party whose name appears in answer n. 9)

was: _____ still living?
(party whose name appears in answer n. 14)

17. How do you know this?

18. What is the present name and address of: _____
_____?
(party whose name appears in answer n. 14)

HERE TESTIMONY IS READ TO PETITIONER. THEN PRIEST ASKS:

19. Have you anything to add, delete or change in your testimony?

HERE PETITIONER TAKES THE FOLLOWING OATH: "I solemnly swear that I have told the truth and nothing but the truth in answer to the foregoing questions, so help me God and these His Holy Gospels which I touch with my hand."

Signed: _____
(Petitioner; maiden name, if woman)

Sworn and signed in my presence on this the _____ day of _____,
19_____, at _____.

Signed: _____
AUDITOR-NOTARY

(SEAL OF CHURCH)

CHARACTER APPRAISAL

vs.

Prot. N.

TRIBUNAL

LIGAMEN: QUESTIONNAIRE FOR BOTH PARTIES TO FIRST MARRIAGE

Testimony of: _____

Address : _____

OATH OF WITNESS: "I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand."

1. What is your full name ?

Please indicate maiden name, if woman:

2. What is your address (P. O., Street, City, State) ?

3. What is your occupation ?

4. Have you any means of identifying yourself (Priest indicates means of identification such as: driver's license, social security card, personal acquaintance, etc.) ?

5. What religion do you profess ?

6. Are you, or have you ever been a Catholic ?

If so, when and where were you baptized ?

7. If you have never been a Catholic, were you ever baptized, christened or sprinkled in any religion ?

If so, in what religion, when and where ?

8. What is your father's name, address and religion ?

9. What is your mother's name, address and religion ?

10. Whom did you marry (please list all marriages chronologically) ?

<u>NAME OF SPOUSE</u>	<u>DATE</u>	<u>PLACE</u>	<u>BEFORE WHOM</u>
-----------------------	-------------	--------------	--------------------

11. What is the present name and address of the first party whom you married ?

12. What is the name, address and religion of the father of this party ?

<u>NAME</u>	<u>ADDRESS</u>	<u>RELIGION</u>
-------------	----------------	-----------------

30. Was there anything unusual about the marriage that would have made it an invalid marriage from the very beginning (if so, please explain)?
31. How long did you and _____ (name of first spouse) live together?
32. Were any children born of this union?

33. Please give the names and addresses of two persons who knew you and _____ (name of first spouse) well at the time of your marriage and who are familiar with the circumstances of the marriage.

PERSONS WHO KNEW YOU

ADDRESS

a.

b.

PERSONS WHO KNEW OTHER PARTY

ADDRESS

a.

b.

34. The Tribunal of the Catholic (Arch)Diocese of _____

has been requested by: _____ to investigate the

(Petitioner)

validity of the marriage of _____ and _____

(Petitioner)

(Respondent)

and to declare this marriage invalid if it is found to be so according to the laws of God and of the Church. Do you wish to express yourself in this matter prior to the decision of the court of the Church?

HERE TESTIMONY IS READ TO WITNESS. THEN PRIEST ASKS:

35. Have you anything to add, delete or change in your testimony?

HERE WITNESS TAKES THE FOLLOWING OATH: "I solemnly swear that I have told the truth and nothing but the truth in answer to the foregoing questions, so help me God and these His Holy Gospels which I touch with my hand."

Signed: _____
(signature of witness)

Sworn and signed in my presence on this the _____ day of _____, 19____, at _____.

Signed: _____
Auditor-Notary

Priest will please comment on character and truthfulness of witness from his own observations and from prudent inquiry among acquaintances:

AUDITOR-NOTARY

Prot. N.

TRIBUNAL

LIGAMEN: QUESTIONNAIRE FOR THE WITNESSES

Testimony of: _____

Address : _____

OATH OF WITNESS: "I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand."

1. What is your full name and address?
2. What is your occupation?
3. Have you any means of identifying yourself (Priest indicates means of identification such as: driver's license, social security card, personal acquaintance, etc.)?
4. What religion do you profess? Do you practice your religion?
5. How long have you known (A) _____ ?
(One party to first marriage)
6. How are you related to this party?
7. How long have you known (B) _____ ?
(Other party to first marriage)
8. How are you related to this party?
9. When, where and before whom did (A) _____ marry
(B) _____ ?
10. What is the present name and address of (A) _____ ?
11. What is the present name and address of (B) _____ ?
12. If either (A) or (B) is deceased, please give date and place of death. If still living, when did you last see or hear from each?
(A) _____
(B) _____

13. How old were the parties at the time of their marriage to each other; give date and place of birth:
 (A) _____
 (B) _____
14. Were these parties mentally and physically capable of contracting a valid marriage (if not, explain in detail)?
15. Please list all marriages contracted by (A) _____
 NAME OF SPOUSE DATE PLACE
16. Please list all marriages contracted by (B) _____
 NAME OF SPOUSE DATE PLACE
17. Had (A) _____ ever been married before the marriage to (B) _____ (if so, give details)?
18. Had (B) _____ ever been married before the marriage to (A) _____ (if so, give details)?
19. If either party had been previously married, was the former spouse still living at the time of the marriage of (A) _____ and (B) _____?
20. Was (A) _____ baptized, christened or sprinkled in any religion?
 RELIGION DATE OF BAPTISM PLACE
21. Was (B) _____ baptized, christened or sprinkled in any religion?
 RELIGION DATE OF BAPTISM PLACE
22. Was either of these parties baptized in the Catholic Church, or did either of these parties ever profess the Catholic Religion?
23. Were these parties related to each other by blood, marriage or legal adoption (if so, explain in detail)?
24. Did either of these parties enter marriage with the intention of ruling out a permanent union (if so, explain in detail giving reasons for answer and source of information)?
25. Did either of these parties enter marriage with the intention of denying the other party the right to normal marriage relations (if so, explain in detail giving reasons for answer and source of information)?

26. As far as you know, at the time of the marriage, did either party reserve the right to be unfaithful to the marriage vows (if so, explain)?
27. Was any grave force or fear brought to bear upon either party to this marriage causing them to enter marriage (if so, explain)?
28. Was there anything unusual about the marriage that would have made it invalid from the very beginning (if so, explain in detail)?
29. Please give the names and addresses of two persons who know both parties to this marriage and are familiar with the circumstances of the marriage?
- | NAME | ADDRESS |
|------|---------|
| | |
| | |

HERE TESTIMONY IS READ TO WITNESS. THE PRIEST ASKS:

30. Have you anything to add, delete or change in your testimony?

HERE WITNESS TAKES THE FOLLOWING OATH: "I solemnly swear that I have told the truth and nothing but the truth in answer to the foregoing questions, so help me God and these His Holy Gospels which I touch with my hand."

Signed: _____
(signature of witness)

Sworn and signed in my presence on this the _____ day of _____,
19_____, at _____.

Signed: _____
Auditor-Notary

(SEAL OF CHURCH)

NOTE: Priest will please comment here on character and truthfulness of witness from his own observations and from prudent inquiry among acquaintances:

Signature of Auditor-Notary

vs.

Prot. N.

ECCLESIASTICAL TRIBUNAL

CITATION OF RESPONDENT
(to be delivered by court messenger)

ISSUED BY: Ecclesiastical Tribunal of _____
TO : _____ (name of Respondent)
_____ (complete address)

CONCERNING: Question of the validity of marriage according to
the laws of God and of the Church, in case of:-

Petitioner: _____ vs. Respondent: _____

Purpose: Respondent respectfully notified and summoned to
appear before:

Officialis/Auditor

AT _____
Street Address City, State

ON _____ at _____
Date Hour

Given at _____, this the _____ day of _____,
19 _____.

OFFICIALIS / AUDITOR

NOTARY
(Seal of Tribunal)

TO BE FILLED IN BY COURT MESSENGER

(Note: cross out two sections below; fill out in duplicate; leave one copy with
Party summoned; return one copy to Tribunal.)

1. This citation was delivered to the party mentioned above in
person, at: _____ (address)
on: _____ (date and hour)

2. This citation was delivered to _____, an
associate of the party mentioned above, upon promise of delivery,
at: _____ (address)
on: _____ (date and hour)

3. This citation was delivered in person to the party mentioned above, but acceptance was refused,

at: _____ (address)

on: _____ (date and hour)

Signed: _____
COURT MESSENGER

REMARKS:

ECCLESIASTICAL TRIBUNAL

CITATION OF RESPONDENT

(to be sent registered mail, return receipt requested)

TO:

(full name of respondent)

(street and number)

(City and State)

Dear

1. _____, The Petitioner in the above entitled case, has requested the Ecclesiastical Tribunal

of

(Archdiocese or Diocese)

to examine, according to the laws of God and of the Church, the validity of the marriage contracted with:

(full name of Respondent)

2. This matter will be treated before:

Officialis/Auditor

at:

(number, street, city, state)

on:

(day, month and year, hour)

3. Because you have a legitimate interest in this matter you are hereby respectfully notified and cited to appear at the place and on the date indicated above. Upon request, every effort will be made to change the date to accomodate the interested parties. If no response is received by the time indicated above, the action will proceed according to the norms laid down by the Canons of the Church, and, if warranted, a decree of ecclesiastical nullity will be issued.

Given at _____, this the _____ day of _____, 19_____.

Officialis/Auditor

Notary

(Seal of Tribunal)

vs.

Prot. N. _____

ECCLESIASTICAL TRIBUNAL

(Decree to be attached to door of Chancery and/or published in the press, the paper and number of times to be designated by the Tribunal, according to the prescriptions of Canon 1720.)

CITATION

In the case of _____ (Petitioner) and
_____ (Respondent), concerning the nullity of
marriage, the Respondent, whose present address is unknown, is summoned
to appear before the Officialis of the (Arch) Diocese of _____,
at _____ (street and number),
_____ (City and State), on _____
(month), _____ (day), _____ (year), at _____ (time).

Anyone with information concerning the address of the Respondent in
this case will please advise the Officialis at the address indicated above.

Summons to be posted at the Chancery for ten days and/or to be pub-
lished _____ (number) times. First publication (second publication).

Given at _____ this the _____ day of
_____, 19 _____.

OFFICIALIS/AUDITOR

NOTARY

(Seal of Tribunal)

DECRETUM NULLITATIS EX CAPITE LIGAMINIS

IN NOMINE DOMINI. AMEN.

1. SPECIES FACTI. Die _____ mensis _____, anno _____,

_____ Pars Actrix in casu, cuius religio est _____,
_____, matrimonium inivit cum _____,
Parte Conventa, cuius religio est _____, in loco
_____, coram _____.

Divortium civile obtentum est in loco _____,
die _____ mensis _____ anno _____.

Pars autem Actrix libellum supplicem porrexit Ordinario istius Diocesis
die _____ mensis _____ anno _____ quo petivit declarationem
nullitatis in casu eo quod Pars Conventa tenebatur vinculo matrimonii validi
antea contracti cum _____, die _____ mensis
_____, anno _____, in loco _____.

Competentia Nostra recognoscitur ex: _____
_____.

2. IN JURE. Invalide matrimonium attentat qui vinculo tenetur
prioris matrimonii, quanquam non consummati, salvo privilegio fidei.
Canon 1069, § 1.

3. IN FACTO. Ex certo et authentico documento, quod nulli contra-
dictioni vel exceptioni obnoxium sit, probatur _____,
Pars Conventa, matrimonium contraxisse cum _____
die et loco supra indicatis. Validitas matrimonii plene confirmatur ex
depositionibus et testimoniis iuratis sequentium:

Quibus omnibus mature consideratis, audito Defensore Vinculi et
impletis praescriptis canonis 1990, declaramus supradictum matrimonium

_____ et _____

ab initio invalidum fuisse ob impedimentum ligaminis.

Datum _____, die _____ mensis _____,
19 _____.

Ordinarius

Notarius

(Sigillum Tribunalis)

(vel)
(Officialis: de Mandato
Speciali Ordinarii, S. C. Sac.,
15 Aug., 1936 Art. 228)

PAULINE PRIVILEGE CASES

PAULINE PRIVILEGE CASES

Special Index

(with brief explanation of each entry)

NOTE: The explanation of the forms, which follows each entry below, supplements the section "Summary of the Law; Policies and Procedure" and should be read in connection with it.

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1. <u>Summary of the Law; Policies and Procedure</u>	75
Pauline Privilege cases involve many difficulties that may be overlooked. Before beginning a case the Priest would do well to review the law. The case should be begun only under the supervision of the Tribunal. Because all or most of the witnesses in a Pauline Privilege case will be non-Catholics, if a case gets off to a bad start it may make a favorable solution impossible.	
2. PETITION: FORM TO BE USED IN CASES IN WHICH THE PROSPECTIVE CONVERT HAS NOT YET BEEN BAPTIZED (Form: P.P. 1)	77
As is explained in the section entitled " <u>Summary of the Law</u> " the better procedure in Pauline Privilege cases would seem to be: a) prove that both parties to the marriage were unbaptized; b) baptize the convert only after the Tribunal has given assurance of a favorable decision. In such instances the original petition is simply a request to the Ordinary to undertake the necessary canonical investigation in order to ascertain whether or not the Petitioner is entitled to use the Pauline Privilege. Before accepting the Petition, the Tribunal should establish the fact that the Petitioner has domicile or quasidomicile in the diocese.	
7. PETITION: FORM TO BE USED WHEN PETITIONER HAS ALREADY BEEN BAPTIZED (Form; P.P. 2)	78
When the Petitioner has been baptized before the process is begun, the Petition form will also contain a request to the Ordinary to authorize the interpellations. The Ordinary who authorizes the interpellations is the Ordinary of the Petitioner (i. e. in terms of domicile or quasi-domicile -- Cf. Woeber, The Interpellations, C. U. A., Washington, D. C., 1942). Before accepting the Petition, the Tribunal should establish the fact that the Petitioner has domicile or quasi-domicile in the diocese.	
4. QUESTIONNAIRE FOR PARTIES (Form: F.F. 4 and P.P. 3) ...	79
It is recommended that the Favor of the Faith questionnaires be used in order to obviate confusion in the event that the case ultimately has to be put on a Favor of the Faith basis. Before questioning any party or witness the Priest should be appointed Auditor-Notary (cf. section on GENERAL FORMS).	
5. QUESTIONNAIRE FOR THE WITNESSES (Form: F.F. 5 and P.P. 4)	79
The comment on the Questionnaire for Parties (<u>supra</u> , n. 4) applies equally to the Questionnaire for the Witnesses.	

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6. LETTER TO PROTESTANT CHURCHES (Form: F. F. 6 and P.P. 5)	79
Full proof of non-baptism will generally be obtained only when the records of the non-Catholic churches "ubi pars verisimiliter baptizari debuisset" have been checked. The Favor of the Faith form may be used.	
7. LETTER TO SCHOOLS ATTENDED (Form: F. F. 7 and P.P. 6)	79
The comment given in the preceding (n. 6) applies.	
8. LETTER TO PASTOR, AUTHORIZING BAPTISM (Form: P.P. 7)	80
When the non-baptism of both parties has been proved, the Tribunal will notify the pastor of the prospective convert that the grounds for application of the Pauline Privilege have been proved and that he may proceed with the baptism of the convert. The pastor is also instructed to send a copy of the certificate of baptism to the Tribunal and to have the newly baptized person request the Bishop to authorize the interpellations.	
9. REQUEST FOR AUTHORIZATION OF INTERPELLATIONS (Form: P.P. 8)	81
After having been baptized, the Petitioner in a Pauline Privilege case requests the Bishop to authorize the interpellations. In instances in which the Petitioner was baptized before the process was opened, this request shall have been made with the filing of the original petition.	
10. AUTHORIZATION OF INTERPELLATIONS: PRIEST APPOINTED (Form: P.P. 9)	82
This form will be used when the Respondent lives in the diocese of the Ordinary who authorizes the interpellations. In the same document the interpellations are authorized and a priest is appointed to make the interpellations. The interpellations are made at the request of the Petitioner, after the Petitioner has been baptized. The Ordinary of the Petitioner, in terms of domicile or quasi-domicile, authorizes the interpellations (Cf. Woeber, <u>The Interpellations</u> , Catholic University of America Press, Washington, D. C., 1942 -- p. 64). The use of registered mail is authorized if necessary.	
11. AUTHORIZATION OF INTERPELLATIONS: ORDINARY OF RESPONDENT REQUESTED TO APPOINT PRIEST TO MAKE INTERPELLATIONS (Form: P.P. 10)	83
If the Respondent lives in another diocese, the Ordinary of the Petitioner authorizes the interpellations and requests the Ordinary of the Respondent to appoint a priest to serve the interpellations. The document should be drawn up in triplicate: one copy is retained; two copies are sent to the Ordinary of the Respondent with the request that he make the appointment and return one copy, sending his second copy to the priest whom he appoints.	

12. THE INTERPELLATIONS: made by personal interview
(Form: P.P. 11)

This form is used in instances in which a priest is appointed to serve the interpellations to the Respondent in a personal interview. The document is drawn up in the form of a report by the priest. The priest effects the interpellations by reading the document and explaining it to the Respondent, and, at the proper place, recording the answers of the Respondent to the two interpellations.

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13. THE INTERPELLATIONS: made by registered mail, return receipt requested (Form: P.P. 12)

This form is used when it is not possible to have a priest interview the Respondent. The Respondent is given time to reply with the indication that a negative answer will be presumed if a reply is not received by the date indicated. No action should be taken on the case until the return receipt, signed by the Respondent, has been delivered by the Post Office. Cf. Bouscaren-Ellis, Canon Law, a Text and Commentary (Bruce: Milwaukee, 1946), p. 555.

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14. DECLARATIO ORDINARII (Form: P. P. 13)

If the Respondent gives a negative answer to both interpellations, the Ordinary declares that the Petitioner may avail himself or herself of the Pauline Privilege and enter a second marriage with a Catholic. If the reply to one of the interpellations is affirmative and the other negative; or, if there is doubt about the sincerity of the Respondent's replies, the matter will have to be subjected to special study (Cf. Woeber, The Interpellations -- Catholic University of America Press, Washington, D.C., 1942). Before assisting at the second marriage, the priest should obtain a dispensation from the three banns, and, in case of any doubt, a dispensation from crimen as described in Canon 1075, n. 1.

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PAULINE PRIVILEGE CASES

Summary of the Law; Policies and Procedure

1. Pauline Privilege cases are based on the doctrine found in the First Epistle of St. Paul to the Corinthians, VII, 12-15. In a Pauline Privilege case, both parties to the marriage which is to be dissolved must have been unbaptized (canon 1120, § 1); one party is subsequently converted and receives valid baptism (canon 1121, § 1); the convert interpellates the party who remains unbaptized to determine whether he or she also wishes to be converted and baptized and, if not, whether, at least, he or she wishes to cohabit peacefully without insult to the Creator (canon 1121, § 1, nn. 1-2).

These interpellations must be made unless the Holy See or the Apostolic Delegate (in virtue of special faculties) dispenses from them (canon 1121, § 2). These interpellations are, as a rule, to be made under the authority of the Ordinary of the converted party. If the infidel party requests time to think it over, this will ordinarily be granted; if this time has elapsed without a reply, a negative response can be presumed (canon 1122, § 1).

Interpellations which are made privately, i. e. not by authority of the Ordinary, are valid, and even licit if this is the only way that they can be made; however, if the interpellations are made privately this must be proved by two witnesses or in some other legitimate fashion (canon 1122, § 2).

If the Holy See (or Its Delegate) grants a dispensation from the interpellations, or, if the interpellations are served upon the infidel party and this party gives a negative answer to both questions or the second question only, then the new convert has the right to enter a second marriage with a Catholic, unless the convert, after receiving baptism, gave the infidel party a just cause for departing (canon 1123).

Even if the marriage is consummated after the baptism of the converted party, the convert can still enter a second marriage with a Catholic if the infidel changes his mind and leaves without just cause or refuses to cohabit peacefully without insult to the Creator (canon 1124) — Provided always that the infidel remains an infidel, i. e., does not receive baptism.

The bond of the previous marriage, contracted in infidelity, is broken precisely when the convert enters a second valid marriage (Canon 1126).

If a Pauline Privilege case has to be sent to Rome, the Holy Office has exclusive competency (canon 247, § 3; canon 1962).

2. The preceding paragraph (1) represents a summary of the law on Pauline Privilege cases. Every point contains technical difficulties. Before reaching any conclusion the Priest would do well to consult a good commentary and refer the matter to the Tribunal.

3. In some cases, no doubt, the Priest will feel justified in receiving a convert into the Church and administering baptism before a possible Pauline Privilege case is investigated. However, this procedure is fraught with dangers; it may not be possible to prove the non-baptism of both parties; if the convert attempts marriage with a Catholic after baptism, he could forfeit his right to use the Pauline Privilege; if there are adulterous relations after baptism, the subsequent marriage could be rendered invalid because of crimen (canon 1075, n. 1). Some Priests may be inclined to assume the

attitude that if the prospective convert is sincere in his desire to become a Catholic, he will abide by the decision of the Church, so that if an unfavorable decision is reached in the marriage case the party will simply remain unmarried. Such an approach represents the ideal case; but is hardly realistic or even prudent. The best procedure seems to be: a) instruct the convert who is a prospective Petitioner in a Pauline Privilege case; b) meanwhile prove the case during the instructions and before baptizing the convert; c) when the case is proved then baptize the convert; d) then make the interpellations; e) then permit the convert to marry a Catholic; f) if there is any doubt about it, obtain a dispensation from crimen (canon 1075, n. 1) before assisting at the subsequent marriage (this is the practice of the Holy Office in Favor of the Faith cases).

4. The individual steps in a Pauline Privilege case are explained briefly after each entry in the Special Index to Pauline Privilege forms.

5. A case will frequently begin as a Pauline Privilege case, but the investigation will uncover the fact that one of the parties was de facto baptized. A solution may still be possible on a Favor of the Faith basis. If questionnaires suitable for Favor of the Faith cases are used from the beginning, the process can continue without difficulty. However, if the Favor of the Faith questionnaires have not been used, it may be necessary to go back and ask all parties and witnesses extra questions in order to put the case on a Favor of the Faith basis. This multiplies the work and may create problems since non-Catholic witnesses will frequently refuse to submit to re-questioning. To obviate this, it is strongly recommended that questionnaires be used from the very beginning which will obtain all the information necessary in a Favor of the Faith case as well as a Pauline Privilege case. This practice is followed in the forms supplied in this Manual.

6. If it is necessary to change a Pauline Privilege case to a Favor of the Faith procedure, it is recommended that this be done as follows: a) draw up the Constitutio Tribunalis Subdelegati (cf. forms on Favor of the Faith cases); b) administer oaths to members of Tribunal; c) have Petitioner submit a Petition in which it is specifically mentioned that the case was opened on a Pauline Privilege basis; d) let the Judex submit the file to the Defensor Vinculi who will specify what is to be done to supplement the process; e) the Judex will then decree that this supplementary work be done (this decree should be made part of the file); f) the process will then be continued as a regular Favor of the Faith case.

7. If the convert in a Pauline Privilege case wishes to marry a non-Catholic (instead of a Catholic, as is the usual circumstance), the dispensation from Mixed Religion and/or Disparity of Cult cannot be granted by the local Ordinary, but must be granted by the Holy Office. The Ordinary may refer such applications for dispensation to the Apostolic Delegate. If this circumstance should arise, the forms for the interpellations should be modified accordingly.

8. The Bishops of the Province of New Orleans have authorized expenses of twenty-five dollars (\$25.00) to be paid by the Petitioner in Pauline Privilege cases. In other dioceses the priest should consult his own diocesan regulations.

PAULINE PRIVILEGE

Prot. N. _____

Petition of a prospective convert who has not yet been baptized

TO: His Excellency: _____

Your Excellency: _____

1. I, the undersigned _____ (maiden name)

respectfully request that canonical proceedings be instituted to establish the fact that I am entitled to avail myself of the Pauline Privilege in the instance of my marriage with the _____ (maiden name)

2. I respectfully present the following information:

- a. My present name is : _____
 b. Complete address : _____
 c. Ecclesiastical parish : _____
 d. Respondent's present name: _____
 e. Complete address : _____

3. This marriage was contracted at _____ on _____ in the presence of _____, At the time of the marriage neither party was baptized and, to the best of my knowledge, both parties have remained unbaptized. I submit the names of the following witnesses to prove non-baptism.

CONCERNING PETITIONER

Name of witness	Address	Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____

CONCERNING RESPONDENT

_____	_____	_____
_____	_____	_____
_____	_____	_____

4. A civil divorce was obtained at _____ on _____.

5. I have resided in this diocese since _____. I have taken instructions in the Catholic Faith and sincerely wish to be baptized a Catholic and to contract marriage with a Catholic, namely, _____ whose address is _____.

6. I enclose the following:

- a. Certificate of marriage to be dissolved;
 b. Bill of complaint for civil divorce (certified);
 c. Certified copy of decree of divorce;
 d. Twenty-five dollars to defray expenses of Tribunal.

Date: _____

Place: _____

Respectfully submitted,
(signed) _____

Petitioner

PASTOR OR ASSISTANT WILL PLEASE give character reference on Petitioner and explain circumstances if Petitioner cannot bear expense of case.

Date: _____

Parish: _____

Place: _____

(signed) _____

Pastor/Assistant

PAULINE PRIVILEGE

vs.

Prot. N.

Petition of petitioner who has already been baptized

To: His Excellency,

Your Excellency:

1. I, the undersigned (maiden name) respectfully request that canonical proceedings be instituted to establish the fact that I am entitled to avail myself of the Pauline Privilege in the instance of my marriage with (maiden name).

2. I respectfully present the following information:

a. My present name is :
b. Complete address :
c. Ecclesiastical parish :

d. Respondent's present name :
e. Complete address :

3. This marriage was contracted at on in the presence of .

At the time of the marriage, neither party had been baptized, christened or sprinkled in any religion. The following witnesses can testify to this:

CONCERNING PETITIONER

Name of witness	Address	Relationship

CONCERNING RESPONDENT

Name of witness	Address	Relationship

4. A civil divorce was obtained at on .

5. I was baptized in the Church of in the City of State of on (date) . I have resided in this diocese since .

6. At the appropriate time, I request Your Excellency to authorize the interpellations to be made in this case and if the Respondent's answers are negative, it is my desire to contract a valid marriage with a Catholic, namely, whose address is .

7. I enclose the following: a) Certificate of marriage to be dissolved; b) Bill of complaint for civil divorce (certified); c) Certified copy of decree of civil divorce; d) Copy of my certificate of Baptism; e) Twenty-five dollars to assist in defraying the expenses of the Tribunal.

DATE:

PLACE:

(signature of Petitioner)

PASTOR OR ASSISTANT WILL PLEASE give character reference on Petitioner and explain circumstances if petitioner cannot bear expenses of case.

DATE:

PARISH:

PLACE:

Pastor/Assistant

PAULINE PRIVILEGE CASES

- a. QUESTIONNAIRE FOR PARTIES (Form: F.F. 4 and P.P. 3)
Use the Favor of the Faith questionnaire in this Manual, p. 104
- b. QUESTIONNAIRE FOR WITNESSES (Form: F.F. 5 and P.P. 4)
Use the Favor of the Faith questionnaire in this Manual, p. 109
- c. LETTER TO PROTESTANT CHURCHES (Form: F.F. 6 and P.P. 5)
Use form as in Favor of the Faith cases, this Manual, p. 113
- d. LETTER TO SCHOOLS ATTENDED (Form: F.F. 7 and P.P. 6)
Use form as in Favor of the Faith cases, this Manual, p. 114

LETTER TO THE PASTOR, AUTHORIZING BAPTISM

THE TRIBUNAL

TO:

Dear

:

1. In the Pauline Privilege case of (Petitioner) _____ and (Respondent) _____, the non-baptism of both parties has been sufficiently proved. You may proceed, therefore, with the baptism of _____, the Petitioner.

2. If, by any chance, the Petitioner has attempted a civil marriage, the parties must be required to separate before baptism is administered.

3. As soon as you have baptized the Party, please send us a copy of the certificate of Baptism.

4. After Baptism has been received the Party should complete the enclosed form (P. P. 8), requesting the Bishop to authorize the interpellations in this case. This form is to be signed in duplicate and both copies returned together with the certificate of Baptism.

5. The Respondent in the case will be given time to consider the interpellations; however, an answer should not be delayed more than two or three weeks. If a negative answer is given to both questions, the Petitioner will be notified that he/she may contract a valid marriage with a Catholic.

Sincerely yours in Christ,

Date:

Place:

Notary

(Seal of Tribunal)

vs.

Prot. N.

REQUEST FOR AUTHORIZATION OF INTERPELLATIONS

(name of Petitioner)

(street and number)

(city and state)

(date)

To: His Excellency,

Your Excellency:

1. I, the undersigned Petitioner, in the Pauline Privilege case of _____ and _____ have been notified that the non-baptism of both parties in this case has been sufficiently proved.

2. I was baptized in the True Church on _____ in the Church of _____ in the City and State of _____.

3. I have lived in the Diocese of _____ since _____ and have the intention of living here for _____ (indicate period of time, or intention of indefinite residence).

4. Accordingly, I respectfully request Your Excellency to authorize the interpellations in this case to be served upon:

(Respondent, maiden name if woman)

(present name of Respondent)

(exact street address)

(city and state)

Respectfully,

(signature of Petitioner)

Signed in my presence, this the _____ day of _____, 19 _____.

(SEAL OF CHURCH)

Pastor/Assistant

TRIBUNAL
of the

AUTHORIZATION OF INTERPELLATIONS: PRIEST APPOINTED
(Respondent residing in diocese)

1. In the Pauline Privilege case of:

_____ and _____
the previous non-baptism of both parties having been canonically established, and the Petitioner having now been baptized in the Catholic Church, said Petitioner, under date of _____ has requested that the interpellation of the Respondent be authorized according to the provisions of Canon 1122, § 1.

2. Accordingly, the undersigned Ordinary of the Petitioner in this case hereby authorizes the required canonical interpellations to be proposed to the Respondent in the name of the Petitioner.

3. To this purpose the Rev. _____ is hereby appointed to serve the interpellations upon the Respondent in this case, according to the instructions given by our Tribunal. In the event that a Priest cannot contact the Respondent personally without undue difficulty, the interpellations may be sent to the Respondent by registered mail, return receipt requested.

Given at _____, this the _____ day
of _____, 19____.

Ordinarius

Notarius

(seal of the Tribunal)

(Note: one copy of this document will be retained in Tribunal files, one copy will be sent to Priest who is appointed to make the interpellations.)

TRIBUNAL
of the

Prot. N. _____

AUTHORIZATION OF INTERPELLATIONS
(Respondent residing outside diocese)

ORDINARY OF RESPONDENT REQUESTED TO APPOINT PRIEST
TO MAKE INTERPELLATIONS

1. In the Pauline Privilege case of:

_____ and _____,
the previous non-baptism of both parties having been canonically established,
and the Petitioner having now been baptized in the Catholic Church, said Pe-
titioner, under date of _____ has requested that the inter-
pellation of the Respondent be authorized according to the provisions of
Canon 1122, § 1.

2. Accordingly, the undersigned Ordinary of the Petitioner in this
case hereby authorizes the required canonical interpellations to be proposed
to the Respondent in the name of the Petitioner.

3. Since the Respondent, whose name and address appear immediately
below, resides in the (Arch)Diocese of _____
the Ordinary of said (Arch)Diocese is hereby respectfully requested to appoint
a priest to serve the canonical interpellations upon the Respondent according
to the enclosed form:

(present name of Respondent)

(maiden name, if woman)

(street and number)

(city and state)

Given at _____ on this the _____
day of _____, 19____.

Ordinary

Notary
(seal of Tribunal)

APPOINTMENT OF PRIEST

According to the above request of the Ordinary of the (Arch)Diocese
of _____, I hereby appoint Rev. _____
_____ to serve the canonical interpellations upon the Re-
spondent whose name and address are given above.

Given at _____ on this the _____ day of
_____, 19____.

Ordinary

Notary
(Note: please return one copy, sending other to appointed priest).

Prot. N. _____

THE INTERPELLATIONS
(made by personal interview)

Note to Priest: Every effort should be made to have a personal interview with the Respondent whose name and address appear immediately below. This document should be studied in advance. If the interview is arranged, the interpellations may be made simply by reading and explaining the document to the Respondent and filling in the answers in the proper places. Every endeavor should be made to secure a truthful and positive YES or NO in the responses. A report should be made at the end of the document, giving the priest's impressions of the Respondent and of the reliability of the responses given. If the Respondent refuses to be interviewed by the priest, he should return the document to the Tribunal without delay, giving such information as will enable the Tribunal to make the interpellations by registered mail.

present name of respondent

maiden name, if woman

street and number

city and state

1. I, the undersigned, Rev. _____,
having been appointed by His Excellency the Most Rev. Ordinary of the
(Arch)Diocese of _____ in accordance
with the provisions of Canon 1122 of the Code of Canon Law, to serve the
canonical interpellations to:

(Respondent)

the former spouse of:

(Petitioner)

did personally interview this Party on the _____ day of _____,
19____.

2. I explained to the Party that, the Petitioner:

had embraced the Catholic Faith and had been baptized, and that this Petitioner now requests permission to remarry in the Catholic Church by virtue of the Pauline Privilege. I further explained that the Petitioner had requested that the Respondent be asked the two questions which appear below.

3. I explained that the so-called Pauline Privilege is based upon the words of St. Paul in the First Epistle to the Corinthians, VII, 12-15:

"If any brother has an unbelieving wife and she consents to live with him, let him not put her away. And if any woman has an unbelieving husband and he consents to live with her, let her not put away her husband.

"For the unbelieving husband is sanctified by the believing wife, and the unbelieving wife is sanctified by the believing husband; otherwise your children would be unclean, but, as it is, they are holy.

"But if the unbeliever departs, let him depart. For a brother or sister is not under bondage in such cases, but God has called us to peace."

4. I then proposed the two following questions to the Respondent and recorded the answers. At the same time I advised the Respondent that if he/she wished to have time to deliberate that this would be granted. (If time for deliberation is requested, the priest should give the Respondent a note setting forth the date, hour and place of the subsequent interview, and advising the Respondent that if he/she does not appear for this interview that a negative response will be presumed to both questions. A copy of this note should be made and sent to the Tribunal without delay.)

FIRST QUESTION OR INTERPELLATION. Are you willing to embrace the Holy Catholic Faith and with a sincere heart to receive the sacrament of baptism, as your consort has done?

ANSWER:

SECOND QUESTION OR INTERPELLATION. If you do not wish to be baptized, will you agree to live peacefully with your converted spouse, without insult to the Creator, that is, will you resume married life and permit him/her to practice freely the Catholic Religion, allow the children who have been born or who may yet be born of the union to be baptized and reared in the Catholic Faith, and live in such a manner that the faith of the convert will not in any way be endangered or weakened?

ANSWER:

5. When the unbelieving spouse (name) _____ answered both interpellations in the negative, I then informed him/her that the converted party (name) _____ will be permitted, in accordance with the doctrine of St. Paul to contract another marriage with a Catholic.

Place:

Date:

(Seal of Parish)

Signature of Priest Delegate

REMARKS OF PRIEST

(Note: If an affirmative answer is given to either of the interpellations, n. 5 above will be crossed out and an explanation given. Then the Priest comments on his impressions of the Respondent and the sincerity of the answers given.)

vs.

TRIBUNAL
of the

Prot. N. _____

THE INTERPELLATIONS

(made by registered mail, return receipt requested)

TO: _____, Respondent

(street and number)

(city and state)

Dear Sir (Madam):

At the request of _____, Petitioner in the above entitled case, the circumstances of your marriage with this Party have been studied. It has been established that at the time of the marriage neither of you had been baptized in any religion and, as far as we can ascertain, that you remain unbaptized. _____, the Petitioner has embraced the Catholic Faith and has been baptized.

Under date of _____, the Petitioner in this case (name) _____, requested the Ordinary of the (Arch)Diocese of _____ to propose to you the two questions which appear below, with the understanding that if you give a negative answer to these questions that he/she will be permitted to contract another marriage with a Catholic. These interpellations have been duly authorized.

The action of the Petitioner in this case is based upon the words of St. Paul in the First Epistle to the Corinthians, VII, 12-15:

"If any brother has an unbelieving wife and she consents to live with him, let him not put her away. And if any woman has an unbelieving husband and he consents to live with her, let her not put away her husband.

"For the unbelieving husband is sanctified by the believing wife, and the unbelieving wife is sanctified by the believing husband; otherwise your children would be unclean, but, as it is, they are holy.

"But if the unbeliever departs, let him depart. For a brother or sister is not under bondage in such cases, but God has called us to peace."

Accordingly, you are requested to answer in writing the two questions which appear below and to sign your name. A self-addressed envelope is

enclosed for the convenience of your reply. If an answer is not received by (date) _____, we will presume that you have answered both questions in the negative. In the event of a negative answer to the questions, the Petitioner will be permitted to remarry as indicated above.

Given at _____, this the _____ day of _____, 19_____.

Officialis

Notarius

(Seal of Tribunal)

THE QUESTIONS OR INTERPELLATIONS

I. Are you willing to embrace the Holy Catholic Faith and with a sincere heart to receive the sacrament of baptism, as your consort has done?

ANSWER:

II. If you do not wish to be baptized, will you agree to live peacefully with your converted spouse, without insult to the Creator, that is, will you resume married life and permit him/her to practice freely the Catholic Religion, allow the children who have been born or who may yet be born of this union to be baptized and reared in the Catholic Faith, and live in such a manner that the faith of the convert will not in any way be endangered or weakened?

ANSWER:

Date: _____

Place: _____

Signature

To be returned to:

(Officialis)

(Address)

VS.

TRIBUNAL

Prot. N.

DECLARATIO ORDINARII IN CASU PRIVILEGII PAULINI

1. _____ (Pars Oratrix) matrimonium
inivit cum _____ (Parte Conventa) die mensis
_____, anno _____. Matrimonium in divortium
civile terminavit die _____, mensis _____, anno _____.

2. Ex inspectis libris baptismorum ecclesiarum catholicarum ubi partes verisimiliter baptizari debuissent, ex aliis probationibus canonicis et praesertim ex iuratis depositionibus et testimoniis sequentium:

Pro Parte Oratice

Pro Parte Infideli

plene probatur quod neutraque pars huic matrimonio baptismum receperat.

3. Die autem _____ mensis _____, anno _____
 _____ (Pars Oratrix) baptismum recepit in Ecclesia
 Catholica apud ecclesiam _____ in
 loco _____.

4. Nobis constat ex actis casus neo-coversum (am) domicilium vel quasi-domicilium habere in hac Nostra Dioecesi.

5. Ad preces Partis Oratricis, die _____, mensis _____,
anno _____, auctoritatem dedimus ad interpellationes canonicas faciendas.

6. Hae interpellationes factae sunt die _____ mensis _____, anno _____ et ad utramque quaestionem Pars Infidelis negativum dedit responsum.

7. Quibus omnibus rite examinatis, probatis et approbatis declaramus quod _____ (Pars Oratrix) ius habeat ad Privilegium Paulinum invocandum in ordine ad contrahendum matrimonium validum cum Catholico.

8. Dispensatio a bannis petatur sicuti a crimine (can. 1075, n. 1) quantum necesse est. Contracto novo matrimonio, annotatio fiat a Parocho conversi tum in libro baptismorum tum in libro matrimoniorum de hoc matrimonio soluto iuxta declarationem Nostram Prot. N.

Datum _____, die _____ mensis _____,
19 _____.

Ordinarius

Notarius

(Sigillum)

FAVOR OF THE FAITH CASES

FAVOR OF THE FAITH CASES

Special Index

(with brief explanation of each entry)

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Before beginning work on a case, it will be helpful to the Priest in the parish and to the Ordinary to know whether the case presents reasonable hope for a favorable solution. The Preliminary Report is simply a listing of the salient features of the case. The Priest may be gathering this information and these documents while instructing the Petitioner. This Preliminary Report a) serves as a basis for drawing up the Petition; b) gives a reasonable estimate of the merits of the case; and c) saves many delays once the process has begun. This report is simply a guide to the processing of the case and is not included in the <u>acta</u> or file which is sent to Rome.	
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The Ordinary is <u>ipso facto</u> the Delegate of the Holy See in this type of case. He may prepare the process himself or subdelegate a qualified Priest to do so; this latter is the usual procedure. The Tribunal will consist of a Subdelegated Judge, a Defensor Vinculi and a Notary. These take the oath of office which appears in the document of their appointment. If it is not convenient for the three members of the Tribunal to appear simultaneously before the Ordinary or his delegate to take the oath of office, the pertinent parts of the oath can be typed up and administered individually. During the course of the process it is generally necessary to appoint other Priests in the capacity of Auditor-Notary, to take the testimony of witnesses. For this purpose, the form from the section on "GENERAL FORMS" may be used.	

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<p>The same questionnaire will be used for the Petitioner and for the Respondent. Either one or the other will be the non-baptized party in the case. The final questions concerning conversion to the Catholic Faith will be asked only of the Petitioner, as is indicated in the questionnaire.</p>	
9. <u>QUESTIONNAIRE FOR THE WITNESSES</u> (Form F. F. 5 and P.P. 4)	109
<p>The best witnesses to prove the non-baptism of a party will naturally be the parents of that party. The testimony of older brothers and sisters also has special value. The testimony of at least two first-class witnesses is required to prove non-baptism, and, in most cases the testimony of additional witnesses will be necessary. Concerning character witnesses on the parties and witnesses in the case, Cf. the section entitled "<u>Favor of the Faith cases, Notes on the Process,</u>" n. 5.</p>	
10. <u>LETTER TO PROTESTANT CHURCHES</u> (Form: F. F. 6 and P. P. 5)	113
<p>It is necessary to check the baptismal records of those Protestant Churches where the allegedly non-baptized person would likely have been baptized if baptism had been received. It is not necessary to check the records of churches indiscriminately, but only of those churches where there is a likelihood of baptism having been received: "<u>curandum ut consulantur quoque libri baptizatorum in locis ubi pars, quae dicitur non baptizata, verisimiliter baptizari debuisset; praesertim in ecclesiis quae ipsa frequentaverit ad acquirendam religiosam institutionem, vel in qua matrimonium celebraverit.</u>" At times it will be possible for the local Priest to approach the Protestant Minister personally for this purpose. In such cases the Priest should send a written report to the Tribunal and this will be made part of the file for Rome. In other cases a letter to the Protestant Church is in order. Best results may be obtained if a plain envelope is used and the address of the Tribunal is given merely by post office box number. It may also be better for an official of the Tribunal to sign the letter in his capacity as a "Reverend Doctor".</p>	
11. <u>LETTER TO SCHOOLS ATTENDED</u> (Form F. F. 7 and P. P. 6)	114
<p>If the allegedly non-baptized person attended any school where he or she would likely have been baptized, a check of the school records should be made in a fashion similar to that described in n. 10 above. It would seem that this prescription applies only to <u>denominational schools.</u></p>	

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13. <u>ANIMADVERSIONES DEFENSORIS VINCULI</u> (sample)	118
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14. <u>VOTUM ORDINARII</u> (sample)	119
<p>This is the most important single document in the case. Where a Judex Subdelegatus has prepared the process, this Priest may also write an independent <u>Votum</u>, to be followed by the <u>Votum Ordinarii</u>. Another acceptable procedure is for the Judex Subdelegatus to prepare a documented <u>Votum</u> for the Ordinary's approval and signature. It will be advisable for the <u>Votum Ordinarii</u>: a) to take cognizance of any points made by the Defensor Vinculi; b) in lining up the proofs, to make annotated reference to documents and to the testimony of parties and witnesses in the case, indicating the page and number of the questions in the file.</p>	

FAVOR OF THE FAITH CASES

Notes on the Process

1. A Favor of the Faith case involves the natural bond of marriage between a baptized non-Catholic and an unbaptized person. The case arises when such a union terminates in civil divorce and one party to the marriage wishes to become a Catholic and to enter a valid marriage with a Catholic.

2. The Holy Office has exclusive competency in these cases; however, the process is prepared by the local Ordinary and sent to the Holy See for a decision. The previous permission of Rome is not needed for the process to be prepared. The Ordinary competent to prepare the case for Rome is:

- a) the Ordinary of the place where the marriage was contracted;
- b) the Ordinary of the place where the Respondent has domicile or quasi-domicile (note that the domicile of the wife will follow that of her husband unless there has been a canonical separation which is not likely in this type of case);
- c) the Ordinary of the Catholic party to the marriage to be dissolved in instances in which the Petitioner has already been received into the Church

The Holy Office has accepted cases from an Ordinary whose only claim to competency was the fact of actual residence of the Petitioner (without domicile). This will be an exceptional procedure, but it could be justified if it were the only practicable way that a case could receive a hearing without endless delays.

3. The Ordinary who prepares the case acts as the Delegate of the Holy Office (Judex Delegatus), but he may sub-delegate a priest for this purpose (Judex Subdelegatus). A special Defensor Vinculi and Notary are appointed for each case, and these may be selected from the regular personnel of the Tribunal. Under ideal circumstances the parties and witnesses in the case would be summoned to the hall of the Tribunal. There the Judex Delegatus or Judex Subdelegatus would propose the questions; the Notary would record the testimony as it is given. However, this will seldom be possible in this type of case because the Respondent and most of the witnesses will be non-Catholics. In order to obtain the deposition of the Respondent and the testimony of witnesses it suffices to appoint one priest as Auditor-Notary. This priest need not be the same one who has been appointed Judex Subdelegatus, and several priests, in turn, may be appointed to this office. If a party or witness lives in another diocese, the Judex will request the Ordinary of that diocese to appoint a priest as Auditor-Notary to take the testimony. As the case develops, the Defensor Vinculi fulfills his functions by subjecting the process to a critical examination and writing his Animadversions accordingly.

4. The line of proof (in establishing the non-baptism of one of the parties and the other essential points) will be, as usual, from documents, the depositions of the parties, the testimony of witnesses, etc. Character testimonials are required concerning parties and witnesses. The easiest way to handle this is to have the Auditor-Notary obtain the necessary information on each party or witness that he hears:

- a) if the Auditor-Notary knows a party or witness personally and can vouch for this person's character and truthfulness, a note to this effect at the foot of the testimony will be sufficient;

- b) if the Auditor-Notary does not know the witness, he could check with acquaintances of the witness concerning the character and truthfulness of the witness and report on this at the foot of the testimony;
 - c) if the Auditor-Notary is unable thus to verify the character and truthfulness of the witness, it will be necessary to question two character witnesses concerning each person who gives testimony in the case. The form for character testimonial given in the section entitled "GENERAL FORMS" may be used for this purpose;
 - d) seven character witness (TESTES SEPTIMAE MANUS) are required for each of the parties in the case only in instances in which the previously non-baptized party later received baptism and it thus becomes necessary to prove non-consummation subsequent to the baptism of the previously non-baptized party.
5. Two essential points must be proved:
- a) that one party to the marriage remained unbaptized during the entire time of marital association;
 - b) that the union was not consummated subsequent to the baptism of the previously unbaptized party.
6. Other points which must be thoroughly investigated and included in the process are:
- a) the existence of grave canonical causes for the requested dissolution;
 - b) the moral impossibility of restoration of conjugal life;
 - c) the causes of the separation and divorce, with special reference to the innocence or guilt of the Petitioner in the case and of the Catholic whom the Petitioner wishes to marry;
 - d) the absence of scandal, amazement or false interpretation (as if the Church approved divorce) among Catholics and non-Catholics in the event that the favor is granted;
 - e) the sincerity of the conversion of the Petitioner;
 - f) provisions for the religious education of children born of the union to be dissolved or of the proposed union of the Petitioner with a Catholic.
7. The points listed below are also worthy of special note. Various dioceses have different policies in these matters, but the points, as listed, are the result of actual experience in dealing with this type of case.
- a) Either the previously baptized party or the previously non-baptized party may be the Petitioner;
 - b) the process may be sent to Rome prior to the reception into the Church of the Petitioner; (This would seem to be the more prudent procedure in the majority of cases. If this is followed; 1) the Petitioner completes the instructions in the Catholic Faith and manifests a sincere desire to become a Catholic; 2) the process is drawn up and sent to Rome; 3) if a favorable answer is received, the Petitioner is then received into the Church; 4) if

an unfavorable answer is received, it could be decided in each individual case whether or not the Petitioner may be received into the Church.)

- c) this type of case may be presented to Rome even though the Petitioner has already entered into a second, invalid marriage, which marriage the Petitioner wishes to have revalidated.

8. Hope of a favorable solution is precluded if there is any reasonable doubt concerning the sincerity of the conversion of the Petitioner. Hope of a favorable solution would also seem to be precluded if the Petitioner or the Catholic whom the Petitioner wishes to marry was notoriously the cause of the break-up of the previous marriage. To entertain such a case would be putting a premium upon crime.

9. The present policy of the Holy Office permits this type of case to be presented in English. The original documents and testimonies should be retained in the files of the local Tribunal. An authentic copy, with each page properly notarized, should be sent to the Holy Office. If the file is sent to Rome in English, it is desirable that the following items, at least, be in Latin:

- a) a letter of transmittal;
- b) the index to the complete file;
- c) the Animadversions of the Defensor Vinculi;
- d) the Votum ordinarii.

10. It has been agreed by the Bishops of the New Orleans Province that the Petitioner in this type of case will assist in defraying the expenses of the local Tribunal to the extent of sixty dollars (\$60.00). In most instances this will cover only a part of the actual expense involved, but it will be a substantial help. If possible, these expenses should be paid when the Petition is filed. If this is not possible, then the pastor of the Petitioner should write a letter of explanation. All the Tribunals of the Church are prepared to handle cases in forma pauperum if circumstances warrant.

The expenses of Rome, including Latin translation to the extent that this is necessary, are generally eighty dollars (\$80.00). The Petitioner should be advised of this -- so as to be prepared when an answer is received on the case.

Each Diocese may have a policy or regulations of its own regarding expenses, e. g., in the Diocese of Natchez, the Bishop requests the parish of the Petitioner to pay half of the usual expenses in the event that the Petitioner is unable to do so.

11. Experience shows that it takes the local Tribunal at least six months, under ideal circumstances, to process this type of case. It takes Rome about a year to give an answer. The Petitioner should be advised of this and should be impressed with the fact that we are not justified in anticipating the decision of the Holy See.

FAVOR OF THE FAITH CASES

Preliminary Report

1. Name of Petitioner (maiden name): _____
Full address: _____
2. Name of Respondent (maiden name): _____
Full address: _____
3. Concerning marriage to be dissolved (between Petitioner and Respondent) give the following information:

<u>DATE</u>	<u>PLACE</u>	<u>BEFORE WHOM</u>
-------------	--------------	--------------------
4. Give the date and place of final separation of the Petitioner from the Respondent.
5. Indicate actual causes of the separation, stating who was to blame for the separation.
6. List names and addresses of witnesses who are familiar with the causes of separation.
7. Who filed for the civil divorce, the Petitioner or the Respondent?
8. When and where was the final decree of civil divorce obtained?
9. List each child born to the Petitioner and Respondent, indicating date of birth, who has custody of child, whether the child has been baptized, and, if so, in what religion.

<u>CHILD</u>	<u>BORN</u>	<u>IN CUSTODY OF</u>	<u>BAPTIZED</u>	<u>RELIGION</u>
--------------	-------------	----------------------	-----------------	-----------------
10. Which of the two parties to this marriage was unbaptized during the entire time of marital association?

<u>NAME</u>	<u>ADDRESS</u>
-------------	----------------
11. Give name, address and religion of the father of the unbaptized party.
12. Give present name and address and religion of the mother of the unbaptized party.
13. Give names, addresses and religion of any guardian or step-parents that the unbaptized party may have had.

14. Give names, ages and addresses of all older brothers and sisters of the unbaptized party.

15. Give names, addresses and relationship of any other witnesses who can testify that the unbaptized party has never been baptized.

16. Give date and place of birth of unbaptized party.

17. Give full name and address of Church attended by parents of the unbaptized party at the time of the birth of this party.

18. List all places in which the unbaptized party lived from the time of birth to the time of final separation from the other party involved in this case.

<u>PLACE OF RESIDENCE</u>	<u>ADDRESS</u>	<u>DATES OF RESIDENCE</u>
---------------------------	----------------	---------------------------

19. List all Churches attended by the unbaptized party during his/her life:

<u>CHURCH</u>	<u>ADDRESS</u>	<u>TIMES ATTENDED</u>	<u>DATES</u>
---------------	----------------	-----------------------	--------------

20. How much instruction has Petitioner received in the Catholic Faith; give name and address of Priest and number of instructions.

21. Has Petitioner been baptized in Catholic Faith? If so, give details.

22. Give name and address of Catholic whom the Petitioner wishes to marry.

23. When did the Petitioner first meet this person?

24. Was this person in any way the cause of the separation or divorce of the Petitioner from the Respondent?

25. Has the Petitioner attempted marriage with this Catholic? When, where?

26. If any children have been born to Petitioner and this Catholic give information listed below.

<u>NAME OF CHILD</u>	<u>BORN ON</u>	<u>BAPTISM</u>	<u>RELIGION</u>
----------------------	----------------	----------------	-----------------

27. Can the Priest assure the Bishop that there will be no danger of scandal, admiration or false interpretation (as if the Church approved divorce) in the event that a favorable solution is found in this case ?

Date: _____
Place: _____
Parish: _____

Signed: _____
Pastor/Assistant

THE FOLLOWING DOCUMENTS ARE REQUIRED IN THE PROCESSING OF A FAVOR OF THE FAITH CASE. THESE SHOULD BE OBTAINED BY THE PETITIONER WITH THE HELP OF ONE OF THE PRIESTS OF THE PARISH AND SHOULD BE SENT TO THE TRIBUNAL WITH THE PRELIMINARY REPORT ON THE CASE:

1. Certified copy of certificate of marriage of Petitioner and Respondent.
2. Certified copy of bill of complaint for civil divorce.
3. Certified copy of final decree of divorce.
4. Letter from the Priest who instructed the Petitioner in the Catholic Faith indicating; - the number of instructions given; the interest manifested by the Petitioner; the Priest's impressions of the sincerity of the Petitioner's desire to become a Catholic.
5. Certificate of Baptism of the Petitioner if the Petitioner has already been baptized a Catholic.
6. Certificates of First Holy Communion and Confirmation of Petitioner if these sacraments have been received.
7. Certificates of Baptism, First Communion and Confirmation in the Catholic Church of all children born to the Petitioner.
8. Certificates of Baptism, First Communion and Confirmation of the Catholic party with whom the Petitioner wishes to enter a valid marriage.
9. Certified copy of the certificate of civil marriage of Petitioner with a Catholic if such marriage has already been attempted.

FAVOR OF THE FAITH CASES

Litterae Transmissoriae

(BISHOP'S LATIN LETTERHEAD)

Eminentissimo Principi
J. Cardinali Pizzardo
Secretario S. C. Sancti Officii
Palazzo del Santo Offizio
Citta del Vaticano

IN RE: SMITH - JONES
(Dioecesis)
Petitio pro solutione
vinculi naturalis
in Favorem Fidei

Eminentissime Princeps:

Hisce praesentibus transmittimus ad Sanctum Officium libellum
supplicem Mariae Elizabeth Smith, Sanctissimo Domino Nostro PIO XII
inscriptum, quo petit dissolutionem vinculi naturalis matrimonii con-
tracti cum Henrico Roberto Jones, non-baptizato.

Ad calcem actorum dedimus votum nostrum quo commendamus preces
Oratricis.

De sinceritate conversionis Oratricis prudenter dubitari nequit.
Nullum adest periculum notatu dignum scandali, admirationis vel falsae
interpretationis.

Et Deus

Datum, _____, hac die mensis _____, anno
_____.

S/ _____
EPISCOPUS (Dioecesis)

S/ _____
Notarius

(Sigillum)

FAVOR OF THE FAITH CASESINDICESSMITH-JONES

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Datum: (civitas) , (status)
 Die 21 mensis novembris anno 1951

S/ _____
 Notarius

(Sigillum Tribunalis)

Prot. N.

FAVOR OF THE FAITH

Outline of Petition

Begin as follows:

MOST HOLY FATHER:

1. Humbly prostrate at the feet of Your Holiness, I, the undersigned _____, having domicile in the Parish of _____, in the City of _____, in the Diocese of _____ present this petition for a dissolution of the natural bond of marriage contracted with _____, on the _____ day of _____, 19____, at _____, in the presence of _____.

Then give the following information:

2. Date and place of birth of Petitioner. Name, religion and address of Petitioner's parents.

3. Present name and address of Respondent. Date and place of birth of Respondent. Name, religion and address of Respondent's parents.

4. Duration of conjugal life with Respondent. Simple statement of number of children born of the union.

5. State which party was baptized: when, where and in which denomination. State which party was not baptized, affirming that this party remained unbaptized during the entire time of marital association. State present baptismal status of the previously unbaptized party.

6. State briefly the causes of separation, indicating person who was to blame. State who filed for civil divorce. Give date and place of decree of civil divorce.

7. Names, addresses and religious status of all children born of this marriage. If these children are minors, state in whose custody they are. Indicate Petitioner's intentions concerning the religious upbringing of these children.

8. State whether or not reconciliation is possible; give reasons.

9. Name and address of Priest who instructed Petitioner in the Catholic Faith. Description of instructions (number). Statement of motives prompting Petitioner to embrace the Catholic Faith. Indicate fidelity in Catholic practices. If already baptized in Catholic Church state when and where. Indicate other sacraments received.

10. Names and addresses of witnesses to prove non-baptism of unbaptized party.

11. Information about the Respondent: whether remarried; attitude towards possible reconciliation; attitude towards the Church.

12. Give reasons for seeking dissolution. If a second marriage has been attempted, give full information. When did Petitioner first meet this person; when and where and before whom was the marriage attempted; any children born of the union; religious status of this person and of children?

Conclude as follows:

13. Therefore, the Petitioner, humbly prostrate at the feet of Your Holiness, and always in obedience to the decisions of Your Holiness, requests the favor of a dissolution of the natural bond of this marriage with _____ so that the Petitioner may be able validly and licitly to enter marriage with a Catholic according to the laws of God and of the Holy Catholic Church.

Date:

Place:

(Signature of Petitioner; maiden name, if woman)

FAVOR OF THE FAITH CASE

Petition

Note that this sample Petition does not follow strictly the outline given on the preceding page, but, rather represents a briefer presentation and illustrates the great variety of circumstances that are met in this type of case. Names and places are fictitious.

713 Locust Street
Pittsburg, Mississippi
28 March, 1951

MOST HOLY FATHER:

1. Humbly prostrate at the feet of Your Holiness, I, the undersigned Mary Elizabeth Smith, having domicile in the Parish of Saint Ephraem, in the city of Pittsburg, Mississippi, in the Diocese of Natchez, present this petition for a dissolution of the natural bond of marriage contracted with Henry Robert Jones on June 15, 1946, in Houston, Mississippi, in the Diocese of Natchez, before a Justice of the Peace. Because Henry Robert Jones refused to support me, I separated from him in 1947. One child was born of this marriage on August 5, 1947 and he is now in the custody of my mother.

2. I have taken a thorough course of instructions in the Catholic Faith and am sincerely convinced that the Catholic Church is the one true Church of Jesus Christ. It is my earnest desire to be received into the Catholic Church, to enjoy the graces of the Sacraments, and to lead an exemplary Catholic life. If this privilege is granted to me, it is my intention of having the child already born to me and all future children baptized and raised exclusively in the Catholic Faith.

3. Henry Robert Jones has never been baptized in any religion. The following persons can testify to this fact: Ezra Jones, his father, Route 2, Murphy, Mississippi; Lily May Jones, his sister, who lives at the same address; Mrs. Stella Harthorne, his sister, who lives at Route 1, Box 125, Cambridge, Mississippi.

4. In September of 1949, I met Francis Lennox, a devout Catholic of St. Ephraem's Parish, Pittsburg, Mississippi. Francis and I wish to be married and fervently pray that we will be permitted to marry according to the laws of God and of the Catholic Church.

5. Therefore, I, Mary Elizabeth Smith, humbly prostrate at the feet of Your Holiness, and always in obedience to the decisions of Your Holiness, request the favor of a dissolution of the natural bond of this marriage with Henry Robert Jones, so that I may be able to embrace the Catholic Faith, raise my child and any future children in the Catholic Religion, remove the danger of sin in which I am now living, and enter a valid marriage with Francis Lennox, a Catholic.

Given at Pittsburg, Mississippi, this the 28 day of March, 1951.

s/ MARY ELIZABETH SMITH
Petitioner

DIOECESIS _____

vs. _____

In re: dissolutionis vinculi
naturalis matrimonii
In Favorem Fidei

Prot. N. _____

CONSTITUTIO
TRIBUNALIS SUBDELEGATI

Hisce praesentibus, Nos, infrascriptus Ordinarius (Archi) Dioecesis
_____, nominamus et subdelegamus:

In Judicem Subdelegatum: _____

In Defensorem Vinculi : _____

In Notarium : _____

ad hoc ut processum conficiant iuxta praescripta Codicis Iuris Canonici et
normas S. C. Sancti Officii datas die 1a mensis maii, 1934, in causa:

_____, Petentis

dissolutionem vinculi naturalis matrimonii contracti cum

_____, Parte Conventa

in Favorem Fidei. Simulque damus Reverendo Judici Subdelegato facultatem
nominandi alios officiales quantum necesse est.

Datum, _____, _____, hac
die mensis _____, 19_____.

Ordinarius

Notarius

(Sigillum)

JURAMENTA

Ego, infrascriptus _____,

Ego, infrascriptus _____,

Ego, infrascriptus _____,

iuro me munus mihi supra commissum sedulo ac diligenter impleturum,
munera mihi in remunerationem, etiam sub specie doni oblata, non recep-
turum, et secretum officii religiose servaturum in iis omnibus quae Sacri
Canones aut superiores secreta servari jusserint, et quando ex revelatione
alicuius actus praejudicium partibus aut Ecclesiae obvenire potest. Sic me
Deus adiuvet.

Judex Subdelegatus

Defensor Vinculi

Notarius

Coram Nobis,

die _____ mensis _____, 19_____.

Ordinarius/Delegatus

(Sigillum)

TRIBUNAL

Prot. N.

FAVOR OF THE FAITH
or
PAULINE PRIVILEGE

QUESTIONNAIRE FOR PETITIONER AND RESPONDENT

Deposition of : _____
Address : _____

OATH OF PARTY: I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

1. What is your name (maiden name)?
2. Can you produce some means of identification (Priest indicates social security card, driver's license, personal acquaintance, etc.)?
3. a. What religion did you profess at the time of your marriage to (other party) _____?
b. What religion did _____ (other Party) profess?
4. a. What religion do you profess at the present time?
b. What religion does _____ (other Party) now profess?
5. Do you believe that baptism is necessary for salvation?
6. a. Have you ever been baptized, christened or sprinkled in any religion?
b. If so, when? Where? In what religion?
c. Was this the only time that you were baptized, christened or sprinkled in any religion?
7. a. Has _____ (other Party) ever been baptized, christened or sprinkled in any religion?
b. If so, when? Where? In what religion?

- c. What is the source of your information concerning the baptism of this Party?
8. a. When and where did you finally and definitely separate from _____ (other Party)?
- b. What was the actual cause of your separation and who was to blame for this?
- c. Who filed for the civil divorce?
- d. When and where was the final divorce obtained?
9. a. Did either you or _____ (other Party) remain unbaptized, unchristened or unsprinkled during the entire time of your marital association? If so, which one of you?
- b. Was this Party subsequently baptized, christened or sprinkled?
- c. When, where and in what Church did this subsequent baptism take place?
- d. What is the source of your information?
10. Have you had marriage relations with _____ (other Party) since both of you were baptized, christened or sprinkled?
11. Please give the names and addresses of seven persons who can vouch for the answer given in reply to the foregoing question?

THE FOLLOWING QUESTIONS 12 TO 24 WILL BE ASKED ONLY OF THE PARTY WHO CLAIMS TO HAVE BEEN UNBAPTIZED DURING MARITAL ASSOCIATION. THEY WILL BE ASKED OF BOTH PARTIES IN PAULINE PRIVILEGE CASES.

12. When and where were you born?
13. a. What are the names and addresses of your parents?
- b. What religion did each of your parents profess at the time of your birth and early childhood?
- c. Did each practice this religion (give name and address of Church)?
- d. Did they believe that baptism was necessary for salvation?
14. Were you ever under the custody of anyone besides your parents (if so, give names, addresses and years of custody)?

15. Were you baptized, christened or sprinkled in any religion in infancy or early childhood?

16. a. Give the names, ages and addresses of older brothers and sisters.

<u>NAME</u>	<u>AGE</u>	<u>ADDRESS</u>
-------------	------------	----------------

b. Which of them were baptized, christened or sprinkled in infancy or early childhood?

c. Why were you not baptized in infancy or early childhood?

17. a. Were you baptized, christened or sprinkled later on in life?

b. If so, when, where and in what Church?

c. Was this before or after your total separation from (other Party)
_____?

18. a. Did you ever attend Sunday School or Church?

<u>NAME OF CHURCH</u>	<u>PLACE</u>	<u>DATES OF ATTENDANCE</u>	<u>FREQUENCY</u>
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19. Did you ever join any Church (if so, give details)?

<u>CHURCH</u>	<u>ADDRESS</u>	<u>DATE OF JOINING</u>
---------------	----------------	------------------------

20. Why were you not baptised, christened or sprinkled in this Church?

21. What Church schools have you attended?

<u>NAME OF SCHOOL</u>	<u>ADDRESS</u>	<u>DATES OF ATTENDANCE</u>
-----------------------	----------------	----------------------------

22. Have you ever been seriously ill in a hospital where you could have been baptized, christened or sprinkled while unconscious (if so, give name and address of hospital and date)?

23. Are you absolutely certain that you have not been baptized, christened or sprinkled in any religion before or during the entire time of your marital association with _____ (other Party)?

24. Please give the names and addresses of persons who can testify that you were never baptized, christened or sprinkled during the entire time of your marital association with _____
(other Party).

	<u>NAME</u>	<u>ADDRESS</u>
a.		
b.		
c.		
d.		

THE FOLLOWING QUESTIONS 25 TO 29 WILL BE ASKED OF BOTH PARTIES

25. a. Were any children born of your marriage to this Party (give names and ages)?
- b. Who has custody of these children?
- c. Have these children been baptized (if so, give details)?
- d. What are the plans for the religious training of these children?
26. a. Have you married again since your separation from (other Party) _____?
- b. Is this marriage still in existence?
27. Was _____ (proposed Catholic spouse of Petitioner) in any way the cause of your separation or divorce from _____ (other Party)?
28. Do you have any desire or plans to become a Catholic and to be baptized in the Catholic Church?
29. Is reconciliation between you and _____ (other Party) possible (give reasons)?

THE FOLLOWING QUESTIONS 30 TO 35 WILL BE ASKED ONLY OF THE PETITIONER

30. a. What motives prompted you to become a Catholic?
- b. When did you first become interested in embracing the Catholic Religion?
31. To what extent do you practice the Catholic Religion?
32. Are you absolutely convinced of the divine origin and authority of the the Catholic Church?

33. a. When did you first meet _____ (proposed Catholic spouse of Petitioner)?
- b. Have you attempted civil marriage with this person (give details)?
- c. Have any children been born of this union (give names and ages)?
- d. Have these children been baptized (give date and Church)?
- e. What are the plans for the religious training of these children?
34. When, and from whom did you first learn that a dissolution of your marriage might be possible?
35. Do you feel that there will be any scandal, surprise or false interpretation among Catholics or non-Catholics, as if the Church approved divorce, in the event that a favorable solution is given in this case (give reasons for answer)?

THE FOLLOWING APPLIES TO BOTH PARTIES.

36. Has anyone instructed you as to how to answer these questions?

HERE TESTIMONY IS READ BACK TO PARTY. THEN PARTY IS ASKED:
Have you anything to add, correct or delete in your testimony?

Please take the following oath: I solemnly swear that, in answer to the above questions, I have told the truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

Signed: _____
(Signature of party; maiden name)

Sworn to and signed in my presence on this the _____ day of _____,
19 _____ at _____.

Signed: _____
(Seal of Church) AUDITOR -(Notary)

CHARACTER REFERENCE

The Auditor-Notary will please give his impressions of Party and reliability of testimony. If he knows Party personally, this should be indicated. If he does not know Party, then he should make inquiry among acquaintances concerning character and truthfulness of Party and should report on this, giving names of contacts. If this is impossible, he should try to ascertain names of possible character witnesses for Party. This reference is essential.

Date: _____
Place: _____
(Seal of Church) Signature: _____
Auditor-Notary

TRIBUNAL

vs.

Prot. N.

FAVOR OF THE FAITH
or
PAULINE PRIVILEGE

QUESTIONNAIRE FOR WITNESSES

Testimony of: _____
Address : _____

OATH OF PARTY: I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

1. a. What is your name?
b. Have you any means of identification (Priest indicates means of identification such as driver's license, social security card, personal acquaintance, etc.)?
2. a. What is your religion?
b. To what extent do you practice your religion?
3. a. How long have you known (A) _____ (Party to marriage in question), who married (B) _____ (other Party to marriage in question)?
b. How well do you know this person?
c. Are you related to this person by blood or marriage (if so, indicate relationship)?
d. What can you say of (A) _____'s character and truthfulness?
4. a. How long and how well have you known (B) _____?
b. Are you related to this person by blood or marriage (if so, indicate relationship)?
c. What can you say of (B) _____'s character and truthfulness?
5. a. How long did (A) _____ and (B) _____ live together?
b. What was the actual cause of their separation and who was to blame for it?

- c. Did (C) _____ (proposed Catholic spouse of Petitioner) have anything to do with this separation or divorce?
- d. How do you know this?
6. a. Has (A) _____ ever been baptized, christened or sprinkled in any religion?
- b. If so, when, where and in what religion?
- c. How do you know this?
- d. If this party has been baptized, was this before or after total and final separation from (B) _____?
- e. How do you know this?
7. a. Has (B) _____ ever been baptized, christened or sprinkled in any religion?
- b. If so, when, where and in what religion?
- c. How do you know this?
- d. If this party has been baptized, was this before or after total and final separation from (A) _____?
- e. How do you know this?
8. a. If either (A) _____ or (B) _____ was baptized after their final separation from each other, can you state whether or not the marriage was ever consummated by marital relations after both parties had been baptized?
- b. What is the source of your information?
- c. Would you believe (A) _____ if this Party testified under oath that the marriage had not been consummated after both Parties had been abptized?
- d. Would you believe (B) _____ if this Party testified under oath that the marriage had not been consummated after both Parties had been baptized?
9. What is the present name and address of (A) _____?
10. What is the present name and address of (B) _____?

QUESTIONS 11-19: FURTHER INFORMATION CONCERNING BAPTISMAL STATUS OF (NAME) _____ WHO ALLEGEDLY REMAINED UNBAPTIZED DURING THE TIME OF MARITAL ASSOCIATION.

11. When and where was _____ born?

12. a. What are the names and addresses of the parents of this Party?
- b. What religion did they profess at the time of this Party's birth and early childhood?
- c. Did they practice this religion (give name and address of Church attended)?
- d. Did they or their religion believe in infant baptism?
- e. Did they believe that baptism was necessary for salvation?
13. Did _____ ever live in the custody of persons other than his/her parents? Give names and addresses.
14. a. Please give the names, ages and addresses of the brothers and sisters of _____.
- | <u>NAME</u> | <u>AGE</u> | <u>ADDRESS</u> |
|-------------|------------|----------------|
| | | |
| | | |
| | | |
| | | |
- b. Was any of these baptized in infancy or early childhood (if so, when, where and in what Church)?
- c. If any of these was baptized in infancy, why was _____ not baptized?
15. a. Please list all Sunday Schools, Church Schools and Churches attended by _____.
- | <u>NAME OF CHURCH OR S. S.</u> | <u>ADDRESS</u> | <u>DATES OF ATTENDANCE</u> |
|--------------------------------|----------------|----------------------------|
| | | |
| | | |
| | | |
| | | |
- b. Was baptism administered in any of these Schools or Churches?
- c. Why was _____ not baptized while attending these Schools and Churches?
16. a. Did _____ ever join any Church?
- b. If so, when, where and what Church?
- c. What ceremonies were used in connection with joining the Church?
- d. Why was _____ not baptized in this Church?
17. Has _____ ever been seriously ill in a hospital where he/she could have been baptized while unconscious (if so, give name of hospital and date)?
18. Can you state positively that _____ was never baptized, christened or sprinkled in any religion later on in life of his/her own accord? (Please obtain complete, positive statement.)
19. Have you been in such close contact with _____ that you would have known about it if he/she had been baptized?

20. a. Were you aware of the fact that _____
wishes to become a Catholic?
- b. Do you think that he/she is sincere in this desire?
- c. Why do you say this?

21. Have you been instructed as to how to answer any of these questions?

HERE TESTIMONY IS READ BACK TO WITNESS. THEN WITNESS IS ASKED:

22. Have you anything to add, correct or delete in your testimony?

Please take the following oath: I solemnly swear that, in answer to the above questions, I have told the truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

Signed: _____
(Signature of witness)

Sworn to and signed in my presence on this the _____ day of _____,
19 _____ at _____.

Signed: _____
AUDITOR-(Notary)

Notary

CHARACTER REFERENCE

The Auditor-Notary will please give his impressions of the witness and the reliability of testimony. If he knows witness personally, this should be indicated. If he does not know witness, then he should make inquiry among acquaintances concerning character and truthfulness of witness and should report on this, giving names of contacts. If this is impossible, he should try to ascertain names of possible character witnesses. This is essential.

Date: _____
Place: _____
Signature: _____
Auditor-Notary

(Seal of Church)

(sender)

(address)

The Reverend Pastor,

(name of Church)

(address)

Reverend and dear Sir:

We are attempting to ascertain whether or not:

has ever been baptized, christened or sprinkled.

This party was born at _____,
on _____. The parents were:

_____, and

This party, or at least certain members of the family, attended your
Church from _____ to _____.

It will be deeply appreciated if you will check your records and advise
me as to whether or not you have any record concerning the baptism, chris-
tening or sprinkling of this person. If so, please indicate the date and
specify whether or not this was a baptism of water.

Thanking you in advance for your kindness and asking a remembrance
in your prayers, I am

Very respectfully yours,

THIS SPACE MAY BE USED FOR REPORT
(Self-addressed envelope enclosed)

(sender)

(address)

The Principal,

(name of school)

(address)

Dear Sir:

We are attempting to ascertain whether or not:

has ever been baptized, christened or sprinkled.

This party attended your school from _____ to

_____.

It will be deeply appreciated if you will advise me if your school records have any information as to whether or not this party was, at any time, baptized, christened or sprinkled in any religion. If so, will you please indicate the denomination, date of baptism, and whether or not it was baptism of water.

Thanking you in advance for your kindness, and with every best wish,

I am

Very respectfully yours,

THIS SPACE MAY BE USED FOR REPORT
(Self-addressed envelope enclosed)

TRIBUNAL Prot. N. _____
of the _____

QUESTIONNAIRE FOR THE PROPOSED CATHOLIC SPOUSE OF PETITIONER

Testimony of: _____
: _____

OATH OF DEPENDENT: I solemnly swear to tell the truth, the whole truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

1. What is your name (maiden name)?
2. Have you any means of identification (Priest indicates means of identification such as driver's license, social security card, personal acquaintance, etc.)?
3. When and where were you born?
4. What is your father's name, address and religion?
5. What is your mother's name, address and religion?
6. What is your religion?
7. When, where and in what Church were you baptized?
8. When, where and in what Church did you receive Confirmation?
9. How often do you attend Holy Mass?
10. How often did you go to Confession and receive Holy Communion before meeting _____ (Petitioner)?
11. When did you first meet _____ (Petitioner)?
12. Where, and under what circumstances did this meeting take place?
13. Was he/she living with _____ (Respondent) at the time that you met him/her?
14. When did you first learn that _____ (Petitioner) had been married to _____ (Respondent)?
15. Did you in any way suggest that _____ (Petitioner) separate from or obtain a divorce from _____ (Respondent)?
16. What were the true causes of the separation and divorce of _____ (Petitioner) from _____ (Respondent)?

17. How do you know this?
18. Was _____ (Petitioner) in any way to blame for the separation and divorce?
19. If so, how well is this known?
20. Were you in any way to blame for the separation and divorce?
21. If so, how well is this known?
22. Give the names and addresses of two persons who can testify to the real causes of the separation and divorce of _____ (Petitioner) from _____ (Respondent).
23. Have you attempted marriage with _____ (Petitioner) (if so, give date, place and before whom)?
24. When, and from whom did you first learn that there may be a possibility of finding a favorable solution in this case?
25. Have any children been born to you and _____ (Petitioner)?
26. What provision do you promise to make for the religious training of these children (indicate whether person promises to baptize and raise children in Catholic Faith)?
27. Give names of all children previously born to _____ (Petitioner).
28. Who has custody of these children?
29. What provisions have been or will be made for the religious training of these children?
30. Do you think there will be any scandal, amazement or false interpretation, as if the Catholic Church approved divorce, in the event that the marriage of _____ (Petitioner) and _____ (Respondent) is dissolved and you are permitted to marry the Petitioner?
31. Give the reasons for your answer.
32. Did you bring any pressure or influence to bear upon _____ (Petitioner) concerning conversion to the Catholic Religion?

HERE TESTIMONY IS READ BACK TO WITNESS. THEN WITNESS IS ASKED:

33. Have you anything to add, correct or delete in your testimony?

Please take the following oath: I solemnly swear that, in answer to the above questions, I have told the truth and nothing but the truth, so help me God and these His Holy Gospels which I touch with my hand.

SIGNED: _____
Proposed Catholic Spouse

Sworn to and signed in my presence on this the _____ day of _____,
19 _____ at _____.

Signed: _____
Auditor-(Notary)

Notary

CHARACTER REFERENCE

The Auditor-Notary will please give his impressions of the witness and the reliability of testimony. If he knows the witness personally, this should be indicated. If he does not know the witness, then he should make inquiry among acquaintances concerning character and truthfulness of witness and should report on this, giving names of contacts. If this is impossible, he should try to ascertain names of possible character witnesses. This is essential.

Date:

Place:

Signature _____
Auditor-Notary

(Seal of Church)

SMITH, Maria Elizabeth
vs.
JONES, Henricus Robertus
Prot. N. F.F. 1/52
Dioecesis X.

ANIMADVERSIONES DEFENSORIS VINCULI

1. In casu Mariae Elizabeth Smith, petentis dissolutionem vinculi naturalis matrimonii contracti cum Henrico Roberto Jones, omnibus tam in iure quam in facto consideratis et bene perpensis, ego, infra-scriptus Defensor Vinculi, sequentes animadversiones propono:

2. IN IURE: Competentia Ordinarii huius dioecesis recognoscitur ratione loci contractus, ad normam canonis 1964 C. I. C. Praescriptiones C. I. C. et normae S. S. C. S. Officii, die 1 mensis maii, 1934 datae, fideliter impletae sunt quantum possibile erat in hoc casu.

3. IN FACTO: Domina Stella Harthorne, soror Conventi, affirmat conventum nomen dedisse sic dictae Ecclesiae Sanctitatis (Holiness Church) in oppido Tippto, Mississippi (p. x, q. x). Plures testes indicant Baptismum esse necessarium in ordine ad hanc sectam amplectendam. Attamen deest testimonium de Baptismo recepto in libris dictae ecclesiae.

4. Oratrix, in sua depositione, statuit se cohabitavisse cum Convento per sex menses (p. x, q. x), dum Conventus (p. x, q. x) et alii testes (p. x, q. x; p. x, q. x) dicunt partes cohabitavisse per duos annos.

5. Unus testis, pater nempe Conventi, indicat Oratricem velle Fidem Catholicam amplecti mere in ordine ad matrimonium ineundum cum viro Catholico (p. x, q. x).

6. Nullum indicium habetur in actis de strenuo conatu ab Oratrice facto in ordine ad baptismum procurandum pro filia in Ecclesia Catholica, etiamsi hoc non videtur esse impossibile vel nimis difficile. Quam ob rem, conversio Oratricis suspicione simulationis non caret.

Datum, (Civitas et Status), die 14 mensis novembris, 1951.

(Subscriptio)

DEFENSOR VINCULI

(BISHOP'S LATIN LETTERHEAD)

SMITH, Maria Elizabeth

vs.

JONES, Henricus RobertusProt. N. F.F. 1/52

VOTUM ORDINARII

1. SPECIES FACTI. Maria Elizabeth Smith, nata die 15 mensis octobris, 1931 de genitoribus a-Catholicis et baptizata in secta Baptistarum, matrimonium inivit die 15 mensis iunii, 1943 cum Henrico Roberto Jones, coram magistratu civili in regione Warren County, (Status) in hac Nostra Dioecesi (Nomen). Matrimonium infelix evasit et partes separatae sunt post tempus circa duorum annorum. Die 17 mensis novembris, 1948, Maria Elizabeth Smith divortium civile obtinuit a Henrico Roberto Jones, in quo divortio unus filius partibus natus matri concessus est in custodiam.

2. Utraque pars huic matrimonio est de gente rustica inter quam paucissimi sunt Catholici. Conventus vero fere totaliter illiteratus est. Familia Conventi adhaerunt, plus minusve, placitis alicuius sectae "Pentecostalis" quae varie vocatur "Ecclesia Sanctitatis" et "Ecclesia Dei". Asseclae huius sectae sunt fere exclusive personae minus cultae et generatim pauperiores. Pro iis, religio est quaedam perturbatio animi sensibilis; ipsi dicunt sese "habere religionem" tantum postquam hanc perturbationem sensibilem experti sunt. Etiam si sint ita irrationabiles, tamen, asseclae sic dictae "Ecclesiae Dei" generatim in dictis suis veritati stricte adhaerunt. De tali familia venit Conventus in casu non-baptizatus, Henricus Robertus Jones.

3. Post separationem suam ab Henrico, Maria Elizabeth Smith incepit sese consociare cum Francisco Lennox, Catholico huius dioecesis. Iam antea semel vel bis frequentaverat ecclesiam Catholicam Novae Aureliae; nunc autem incepit verum interesse habere in ipsa fide Catholica. Maria Elizabeth, ergo, instructiones subivit in Doctrina Catholica, quibus expletis, sincero corde sese velle fidem Catholicam amplecti professus est. Die tandem 28 mensis martii, Maria Elizabeth Smith Nobis dedit libellum supplicem, Sanctissimo Domino Nostro PIO XII inscriptum, quo petit dissolutionem vinculi naturalis matrimonii sui cum Henrico Roberto Jones, non-baptizato, contracti, ita ut possit in Ecclesiam Catholicam recipi, ad sacramenta Ecclesiae admitti, et matrimonium validum et licitum cum Francisco Lennox, Catholico, inire. Nominavimus Tribunal Subdelegatum ad processum conficiendum. Expleto processu, Iudex Subdelegatus accurate recognovit omnia acta. Nunc, ergo, omnia acta, tum originalia tum exemplaria, prae manibus habentes, summa cum reverentia damus votum nostrum.

4. IN JURE. Casus regitur normis a S. S. C. S. Officii, datis die 1 mensis maii, 1934.

5. IN FACTO. DE BAPTISMO NON RECEPTO A PARTE CONVENTA. Ipse Conventus, sub iuramento, dicit sese nunquam esse baptizatum (p. x, q. x); dicit sese, ex propria scientia, certo scire sese nunquam esse baptizatum (p. x, q. x). Admittit sese profiteri religionem "Ecclesiae Sanctitatis" (p. x, q. x) sed addit sese nunquam "sensisse religionem" (p. x, q. x) et explicat quem debere "sentire (seu habere) religionem" in ordine ad baptismum recipiendum (p. x, q. x). Pater Conventi, etiam si credit in religionem (p. x., q. x), et putat baptismum esse

necessarium (p. x, q. x), tamen, ipse non est baptizatus (p. x, q. x) et positive affirmat Conventum nunquam esse baptizatum (p. x, q. x). Iuxta testimonium patris Conventi, sunt sex filii familiae Jones ex quibus nullus baptizatus est in infantia (p. x, q. x). Duae tantum sorores Conventi baptizatae sunt apud ecclesiam sic dictam Adam's Arbor, in loco Payne, Mississippi, ad aetatem 12 et 11 annorum respective (p. x, q. x). Conventus nunquam nomen dedit ecclesiae (p. x, q. x). Et, tandem, pater Conventi, sub iuramento, affirmat se certo scire Conventum nunquam fuisse baptizatum (p. x, q. x). Lily May Jones, soror Conventi, profitetur religionem "Ecclesiae Sanctitatis" sed nunquam baptizata est (p. x, q. x), et, nihilominus sese existimat fidelem esse in praxi huius religionis (p. x, q. x). Haec soror, sicuti pater, clare dicit Conventum nunquam esse baptizatum (p. x, q. x). Etiam si in "Ecclesia Sanctitatis" baptismus exigitur a membris ecclesiae (p. x, q. x), tamen, Conventus nunquam nomen dedit cuilibet religioni (p. x, q. x). Haec soror, sub iuramento, affirmat se certo scire Conventum nunquam esse baptizatum (p. x, q. x).

6. Pruisquam perveniamus ad testimonium sororis Conventi, Dominae Stellae Harthorne, inspiciamus testimonia relate ad ecclesias frequentatas a Convento. Conventus dicit sese frequentasse "Ecclesiam Sanctitatis" in loco Isola, Mississippi, annos 1929-1930 et ecclesiam sic dictam Adam's Arbor in loco Payne, Mississippi annos 1941-1946 (p. x, q. x); pater Conventi tantum dicit Conventum frequentasse ecclesiam sic dictam Adam's Arbor (p. x, q. x); et similiter, soror Lily May Jones mentionem facit tantum eiusdem ecclesiae Adam's Arbor (p. x, q. x). E contra, Stella Harthorne, soror Conventi, dicit Conventum etiam frequentasse "Ecclesiam Sanctitatis" in loco Tippto, Mississippi (p. x, q. x), ibique, uti notat Defensor Vinculi (p. x, n. 3), nomen ecclesiae dedisse. Etiam si eadem testis dicit baptismum esse requisitum a membris huius ecclesiae (p. x, q. x), tamen profitetur sese nescire cum quibusnam caeremoniis Conventus nomen dedit ecclesiae (p. x, q. x). Nusquam haec testis dicit Conventum esse baptizatum. Tantum dicit possibile esse eum esse baptizatum sed sese certo non scire (p. x, q. x). Unum tantum dicit cum certitudine, nempe, quod Conventus non erat baptizatus in infantia (p. x, q. x). Iam audivimus patrem Conventi et sororem Lily Mae profitentes religionem eiusdem "Ecclesiae Sanctitatis" simulque affirmantes sese nunquam fuisse baptizatos. Stella Harthorne autem dicit sese nullam habere religionem (p. x, q. x). Praetera Conventus dicit sese nunquam nomen dedisse cuilibet religioni (p. x, q. x), cum quo testimonio omnino concordant testimonia patris (p. x, q. x) et sororis Lily May. Insuper, tandem, "Ecclesia Sanctitatis" in loco Tippto, Mississippi (p. x) sicuti ecclesia sic dicta Adam's Arbor (p. x) nullam habent annotationem de baptismo recepto a Parte Conventa. Ecclesia frequentata a Convento in loco Isola, Mississippi (p. x, q. x) erat ecclesia vaga quae nullos habuit libros baptizatorum (p. x). Quibus omnibus mature consideratis Nobis videtur plene probatum quod Conventus in casu, Henricus Robertus Jones, nunquam baptizatus est, et non-baptizatus adhuc manet.

7. DE CAUSIS SEPARATIONIS ET DE INNOCENTIA CATHOLICI CUM QUO ORATRIX VULT MATRIMONIUM INIRE. Primo notandum est quod Oratrix, nata die 16 mensis octobris, 1931 (p. x, q. x), tempore matrimonii contracti, nempe die 15 mensis iunii, 1946 (doc. p. x) habuit aetatem tantum 14 annorum, 7 mensium et 29 dierum. Ex alia parte, Conventus pertinet ad illam classim operariorum qui pro mercede recipiunt partem messis quam faciunt. Generatim personae huius typi, saltem in hisce regionibus, sunt minus stabiles. Hinc, ab initio, matrimonium Smith-Jones sub difficultatibus laborabat. Quoad durationem cohabitationis sunt diversa responsa, uti notat Defensor Vinculi (p. x, n. 4), sed punctum est minoris momenti: Oratrix ponit tempus sex mensium

et dicit separationem locum habuisse circa annum post matrimonium contractum (p. x, q. x); testimonium Lila May Jones, soror Conventi, concordat cum depositione Oratricis (p. x, q. x); alii autem dicunt partes cohabitavisse ad tempus circa duorum annorum (Conventus, p. x, q. x; pater Conventi, p. x, q. x; Stella Harthorne, soror Conventi, p. x, q. x). Clarum est quod Oratrix incepit sese consociare cum Francisco Lennox, Catholico, tantum post separationem definitivam a Convento (Oratrix, p. x, q. x; Conventus, p. x, q. x; pater Conventi, p. x, q. x; soror Conventi, p. x, q. x). Nemo dicit Lennox fuisse causam separationis aut divortii (Oratrix, p. x, q. x; Conventus, p. x, q. x; pater Conventi, p. x, q. x; soror Conventi, p. x, q. x). Quoad veras causas ipsius separationis, testes non sunt sibi constantes. Oratrix, in sua depositione, dicit se separasse a Convento quia ipse, propria culpa (p. x, q. x), ei necessaria pro vita non suppeditabat (p. x, q. x). Conventus de hoc nullam mentionem facit sed simpliciter dicit Oratricem eum reliquisse (p. x, q. x) et addit se putare familiam Oratricis influxum super eam habuisse (p. x, q. x). Pater Conventi, uti causam assignat repugnatiam seu diversitatem partium (p. x, q. x). Clarum est tamen quod Oratrix divortium civile obtinuit a Convento dum ipse absens erat in civitate Detroitensi et nil scivit de divortio pendente (libellus supplex pro divortio, p. x; Conventus, p. x, q. x; pater Conventi, p. x, q. x). Ceterum, Nostro iudicio, verae causae separationis et divortii erant ignorantia, paupertas et praesertim defectus cuiuslibet veri nominis educationis Christianae; culpa erat ex utraque parte.

8. DE POSSIBILITATE RECONCILIATIONIS. Tempore quo partes et duo testes interrogati erant in hoc casu, Conventus secundas nuptias nondum tentaverat. Nihilominus nemo putavit reconciliationem fuisse possibilem (Oratrix, p. x, q. x; Conventus, p. x, q. x; pater Conventi, p. x, q. x; soror Conventi, p. x, q. x). Postea, autem Conventus secundas nuptias tentavit cum Maria Magdalena Scroggins, die 15 mensis iunii, 1951 (Stella Harthorne, p. x, q. x) ex quod deducimus reconciliationem inter Oratricem et Conventum nunc esse omino impossibilem.

9. DE SINCERITATE CONVERSIONIS ORATRICIS. Primo notandum quod parochus Oratricis est sacerdos prudentia et zelo insignis. Ipse instructiones dedit Oratrici in doctrina Catholica eamque pro sinceritate commendat. Oratrix doctrinam Ecclesiae in omnibus firmiter credit sed, prudentiae causa, parochus nondum formaliter eam recepit ad unitatem Ecclesiae. Missam audit omnibus diebus Dominicis in quibus non debet, ex necessitate, laborare (epistola parochi, p. x; Oratrix, p. x, q. x). Cum ergo pater Conventi, uti notat Defensor Vinculi (p. x, n. 6), dicit se putare Oratricem velle Fidem Catholicam amplecti mere in ordine ad matrimonium ineundum cum Catholico, eum facile credere non possumus. Haec est mera suspicio e parte patris Conventi uti patet ex responsis eius ad qq. x et x. (p. x). Defensor Vinculi aliam habet difficultatem de sinceritate conversionis Oratricis ex eo quod filius eius nondum baptizatus est in Fide Catholica, sed de hoc puncto in sequente paragrapho. Hic dicimus, omnibus mature consideratis, nos non posse prudenter dubitare de sinceritate Oratricis quae iam onera sine privilegiis vitae Catholicae sibi sumpsit.

10. DE PROLE SUSCEPTA EX MATRIMONIO SOLVENDO. Ex matrimonio Smith-Jones unus filius natus est die 5 mensis augusti, 1947 (Oratrix, p. x, q. x; pater Conventi, p. x, q. x). Hic filius est in custodia matris Oratricis (p. x, q. x) sed nondum baptizatus est in Ecclesia Catholica. Ex hoc puncto, Defensor Vinculi (p. x, n. 6) sumit difficultatem. Notandum est tamen Oratricem promittere hunc filium baptizaturum et educaturum fore in Fide Catholica quam primum ac possit matrimonium contrahere cum Catholico (p. x, q. x). Parochus rem explicat: Oratrix

nunc debet victum quaerere opere proprio. Interea filius manet apud matrem Oratricis a-Catholicam. Si vero possibile erit Oratrici matrimonium inire cum Catholico, tunc promittit hunc filium sicut alios forsitan nascituros, baptizatos et educatos fore in Fide Catholica (cf. epistola Parochi, p. x; Oratrix, p. x, q. x). Ex una parte talis mens a parte Oratricis videtur manifestare quandam debilitatem; ex alia autem parte, considerandae sunt omnes circumstantiae difficilimae sub quibus Oratrix laborat. Quibus omnibus mature consideratis, Nos iudicamus certam spem baptismi Catholici et educationis huius filii iam nati potius constituere causam dissolutionis concedendae.

11. DE CATHOLICO CUM QUO ORATRIX VULT MATRIMONIUM INIRE.

Oratrix vult matrimonium contrahere cum Francisco Lennox, Catholico. Franciscus Lennox baptizatus est in Ecclesia Catholica (p. x); Primam Sanctam Communionem recepti (p. x) sicuti sacramentum Confirmationis (p. x). Missam audit diebus Dominicis (depositio, p. x, q. x). Comendatur a parocho (p. x). Spes est ut, contracto matrimonio cum Oratrice, Lennox ferventior vitam Catholicam ducat. Tum Oratrix, tum Lennox commendandi sunt quia matrimonium civile non tentaverunt nec cohabitant.

12. DE ABSENTIA PERICULI SCANDALI, ADMIRATIONIS VEL FALSAE INTERPRETATIONIS.

Omnes profitentur matrimonium Smith-Jones fuisse bene notum inter populum. Omnes etiam, etiamsi longinquo habitant ab ecclesia Catholica, sciunt Ecclesiam Catholicam gravissime condemnare abusum divortii civilis (pater Conventi, p. x, q. x; soror Conventi, p. x, q. x). Nemo testium putat dissolutionem matrimonii, forsitan concessuram, ansam fore daturam falsae interpretationi. Nos autem non iudicamus adesse periculum scandali notatu dignum, et hoc, sequentibus de causis: Oratrix erat valde iuvenis tempore matrimonii contracti et generatim laici non distinguunt inter declarationem nullitatis et dissolutionem vinculi; omnes sciunt doctrinam Ecclesiae relate ad indissolubilitatem simulque sciunt Ecclesiam tribunalia habere ad causas matrimoniales tractandas et definiendas; qui sciunt de matrimonio in hoc casu etiam sciunt de plena investigatione facta; Catholici insuper, sine quaestione, accipiunt iudicia Ecclesiae in hisce materiis. Praetera ipsa paupertas et humilitas partium in casu removet periculum scandali vel falsae interpretationis. Non timemus igitur periculum scandali, admirationis vel falsae interpretationis in casu.

13. DE CREDIBILITATE TESTIUM. Omnes testes commendant tum Oratricem tum Conventum pro eorum veracitate. Ipse testes commendantur ad calcem eorum testimoniorum et in litteris a parocho conscriptis, peracta cauta investigatione et auditis personis fide dignis.

14. DE CAUSIS DISSOLUTIONEM SUADENTIBUS. Inter causas quae deduci possunt pro dissolutione concedenda, sequentes sunt maioris momenti:

- a. Conversio Oratricis;
- b. Procuratio baptismi et educationis Catholicae filii iam nati ex unione Smith-Jones;
- c. Introductio Fidei Catholicae inter gentem ubi paucissimi sunt Catholici;
- d. Remotio periculi matrimonii civilis inter Oratricem et Lennox.

Quibus omnibus mature consideratis, solum Deum prae oculis habentes, ad pedes Suae Sanctitatis humiliter provoluti, commendamus preces Oratricis ut dissolvatur vinculum naturale matrimonii Mariae Elizabeth Smith cum Henrico Roberto Jones ita ut Oratrix possit ad unitatem Ecclesiae recipi et matrimonium validum et licitum inire cum Francisco Lennox, Catholico.

Datum, (Civitas et Status), hac 21a die mensis novembris, 1951.

(subscriptio)

(subscriptio)

NOTARIUS

EPISCOPUS (NOMEN DIOECESIS)

FORMAL CASES

FORMAL CASES

(Special Index)

(with brief explanation of each entry)

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FORMAL CASES

Summary of the Law on Procedure in Formal Cases

1. In the General Introduction to this Manual, the section (§ 3) on Procedural Law and the Organization of the Tribunal explains that Book IV of the Code of Canon Law deals with procedure. It then shows the relationship of the special Instruction issued by the Sacred Congregation of Sacraments on procedure in marriage cases to Book IV of the Code. The organization of the Tribunal and the functions of the various officers of the Tribunal are explained. This material should be reviewed at this point. The present section will present the essential points of the Instruction of 1936 bearing on formal trials; it will also give a brief commentary when this seems necessary. For actual Tribunal work, the Instruction should always be at hand for reference, but a summary of this kind has definite advantages. Before taking up the process point by point, the whole process of a formal trial will be briefly reviewed in the one paragraph which follows (n. 2).

2. The first step in a formal case is the filing of a Petition with a Tribunal which has jurisdiction over the case. The personnel of the court is then set up and the Parties to the case are given the opportunity to take exception to any member of the Tribunal. There are three judges, one of whom must be the Officialis or the Vice Officialis and who must be the Presiding Judge; one of the judges acts as Ponens and it is his duty to report on the case to the panel of judges and to write the final sentence. The Defensor Vinculi prepares the questionnaires for the parties and witnesses and must contend that the marriage is valid. There must be a Notary who will record the process. The Petitioner is represented by a Procurator-Advocate who fulfills the functions of proxy and of lawyer.

The Tribunal meets and either accepts or rejects the Petition. If the Petition is accepted the parties are summoned to appear for the "joinder of issue" which is stated in the question "an constet de nullitate matrimonii in causa ex capite" With the joinder of issue the case is officially under way. The Advocate of the Petitioner (and of the Respondent, if the Respondent wishes to have an Advocate) presents points upon which he wishes the parties and witnesses to be questioned. The Defensor Vinculi draws up the questionnaires, puts them in a sealed envelope and these are opened only for the actual questioning. Then, in turn, the parties and witnesses are summoned for questioning before the Tribunal.

At the hearing of the parties and witnesses there will be present: the Judge or Auditor, who may be especially appointed for this duty and need not be one of the Collegiate Tribunal; the Defensor Vinculi, who must always be summoned but need not appear and the Notary who records the proceedings. The Advocate of the party may be present if the Judge considers this necessary or advisable. Only the Judge asks the questions. If the Defensor Vinculi wishes to ask a question, he writes it down and hands it to the Judge who then proposes the question. All three judges may be present, but their presence is not required. If a Judge wishes to ask a question he also writes it down and hands it to the Presiding Judge who proposes it. If a witness cannot come to the court, a commission is appointed to hear him elsewhere. Experts are heard if the circumstances or the law require it. When all the testimony is in the process is published and the Parties are given the opportunity of examining the testimony and proofs and of proposing additional and final arguments. A decree is then issued closing the case. The Advocate for the Petitioner then writes his brief, contending that the marriage is invalid.

The Defensor Vinculi responds to this in his "Animadversiones", pointing out all arguments that tend to prove that the marriage was valid. This exchange may go on under the moderation of the Presiding Judge.

When the arguments have been completed, the case is turned over to the judges who write individual opinions. Then the Collegiate Tribunal is called together to discuss and pass sentence on the case. Sentence is passed according to a majority vote and the Ponens is instructed to draw up the final sentence in Latin. The Parties are notified of the sentence.

If the court decides that the marriage was invalid, the Defensor Vinculi must appeal to the Court of Second Instance within ten days. If the court decides for the validity of the marriage, the Petitioner may appeal within ten days. When the case has gone to the Court of Second Instance, the Petitioner must indicate within thirty days his or her intention of prosecuting the case. The case then goes through the same procedure in the court of Second Instance as outlined for the First Instance. The Petitioner will not be permitted to remarry unless a favorable decision is given by two courts of the Church. Appeal from the Court of Second Instance may be made to the Sacred Roman Rota.

We will now examine the various steps of the trial in greater detail. References to the Instruction of 1936 will be made by Articles.

3. COMPETENCY OR JURISDICTION. Some marriage cases are reserved to the Holy See (Art. 2). A tribunal must have competency or jurisdiction in order to adjudicate a case. The competent Tribunal will be one of the following: the Tribunal, a) of the place where the marriage in question was contracted; b) of the place where the Respondent has domicile or quasi-domicile if both parties are Catholic; c) of the place where the Catholic party has domicile if the marriage is a mixed marriage (Art. 3). Articles 6-8 make specific applications of this general rule and clear up several difficult points of law. It must be kept in mind that the wife generally follows the domicile of her husband, though there are exceptions to the rule. If a case is to be tried by the Tribunal of quasi-domicile, the special Instruction of the Sacred Congregation of Sacraments, given December 23, 1929, must be followed (A. A. S., XXII, 168).

4. THE COLLEGIATE TRIBUNAL. The Collegiate Tribunal proceeds as a group and pronounces sentence according to a majority vote (Art. 14, § 1). This does not mean that all three judges must be present for every step of the trial. As a matter of fact, one of the judges (or even a qualified priest who is not a member of the Collegiate Tribunal) is generally appointed as the Auditor or Instructor to prepare most of the case for reference to the Collegiate Tribunal. However, appeal can always be made to the Collegiate Tribunal against any decree or decision of the Instructor or of the Presiding Judge. The actual presence of the Collegiate Tribunal is required for certain steps of the case: e. g. for the rejection of a Petition; for final sentence in the case.

5. THE RIGHT TO TAKE EXCEPTION TO THE MEMBERS OF THE TRIBUNAL. Before action is taken on a case the names of all the members of the Tribunal must be made known to the Parties and they must be advised of their right to take exception to any member of the Tribunal (Art. 26). The Instruction does not say so, but it would seem permissible to wait until the "joinder of issues" to advise the Respondent of this right. If the Respondent is a Catholic, of course, this action could be taken immediately, but, if he is a non-Catholic, this preliminary action might deter him from cooperating with the Tribunal.

6. JUDGMENT CONCERNING THE COMPETENCY OF THE TRIBUNAL.

Each Tribunal decides upon its own competency. If a Tribunal declares itself incompetent, the Party who considers himself aggrieved can appeal to a higher Tribunal within ten days. The Parties may lodge exceptions against the competency of the Tribunal and the Tribunal itself rules upon these exceptions (Art. 27-29).

7. THE RIGHT TO IMPUGN THE VALIDITY OF A MARRIAGE. A Tribunal cannot adjudicate a marriage case unless a regular accusation or petition has been filed, requesting the action of the court (Art. 34). The only ones who can bring suit in marriage cases are the parties to the marriage and the Promotor of Justice in certain cases (Art. 35, § 1).

A non-Catholic cannot be the Petitioner in a formal marriage case (Art. 35, § 3). For sufficient canonical cause, the Holy Office will give a non-Catholic permission to bring suit in a marriage case.

If a Party has been the direct and culpable cause of the diriment impediment or of the invalidity of the marriage, this party is likewise estopped from impugning the validity of the marriage (Art. 37, § 1). This is a difficult point in law and no judgment should be reached until the matter has been subjected to careful study and consultation. If a party was the victim of coercion, he or she is not estopped from impugning the marriage (Art. 36, § 4).

As a general rule, Parties who are estopped from impugning the validity of a marriage may, nevertheless, denounce the nullity of the marriage to the Ordinary or to the Promotor of Justice, who, under certain circumstances, may take action in the case (Art. 37, § 4). Definite limitations are placed upon the Promotor of Justice in taking this action (Art. 38-39).

8. PROCURATORS AND ADVOCATES. Articles 43-53 deal with Procurators and Advocates. A Procurator is the proxy for a Party and may be summoned and sign papers in the name of the Party. An Advocate is the lawyer for a Party. He represents the Party in presenting the case to the Tribunal and writes the defense for the Party at the end of the case. The same person may serve in the twofold capacity of Procurator and Advocate. Before undertaking his duties, the Procurator or Advocate must have a special mandate from the Party (Art. 49). If a Procurator represents a person without this mandate, any sentence given in the case is invalid (Can. 1892, 3^o). The Procurator and Advocate must be approved by the Bishop, and admitted to the exercise of their duties by the Tribunal (Art. 48, § 4). The mandate of the Procurator-Advocate expires with the final sentence in a case, but this does not prevent the Procurator-Advocate from lodging an appeal with a higher court (Art. 52, § 2).

9. THE PETITION OR LIBELLUS SUPPLEX. In the Petition the object of the controversy must be expressed and the court requested to declare the marriage invalid (Art. 55, § 2). Special provision is made for the lodging of an oral Petition by a Petitioner who does not know how to write (Art. 56). The Petition must contain the following elements:

- a. The name of the Tribunal;
- b. The object of the Petition, namely, a request that the marriage be declared invalid;
- c. the names of the parties to the marriage;
- d. the grounds upon which the declaration of nullity is requested;
- e. the law upon which the claim is based, stated in a general way;
- f. the evidence which will be presented, outlined in a very general fashion in order to show that the Petition is not being filed temerarily;

- g. the place where the marriage was contracted and the domicile and quasi-domicile of the Parties;
- h. The signature of the Petitioner or of the Petitioner's Procurator (if a Procurator has already been duly appointed); the actual address of the Petitioner should be given and the document dated with year, month, day;
- i. The mandate of the Petitioner to the Procurator-Advocate; this should be attached to and submitted with the Petition (Art. 60). The signature on the mandate must be recognized by the Pastor or by the Tribunal (Art. 49).

10. THE ADMISSION OR REJECTION OF THE PETITION. ATTEMPT AT RECONCILIATION. When the Petition has been received, the case is assigned to a turnus of three judges; the personnel of the court is made known to the Parties as indicated above; the Tribunal then decides upon its competency; ascertains whether the Petitioner has the right to bring action in the case; then the Tribunal either accepts or rejects the Petition (Art. 61). The Presiding Judge can accept the Petition; if it is rejected this action should be taken by the Collegiate Tribunal. After the Petition has been accepted, the Parties in the case may be required to separate if they are still living together and the Ordinary judges that this causes grave scandal (Art. 63). Canon 1965 requires the judge to attempt to reconcile the Parties. This may be done through the services of the proper pastor. A record of the effort should be kept.

11. THE SUMMONS AND THE JOINDER OF ISSUES OR THE "LITIS CONTESTATIO." After the Petition has been accepted, the time has come for the summoning of the Respondent in the case for the "Joinder of Issues" which is called the "Litis Contestatio." It should be recalled that if a given Party has appointed a Procurator, that this Procurator can be summoned in the name of the Party. It is sometimes possible in a case to have the Respondent appoint a Procurator; if this is done, many difficulties are avoided. It must also be remembered that if a Party appears "voluntarily" that the summons is not required (Art. 74, § 2). In this connection, it may be possible to have a priest contact the Respondent personally and offer to take the Respondent to the Tribunal at the appointed day and hour; in such a case the summons could be dispensed with and this should be recorded. For validity the summons must contain all the elements mentioned in canon 1715 (Art. 76, § 1); this is a most important detail in procedural law. In the original summons, the Respondent is instructed to appear before the Tribunal for the "Joinder of Issues." Articles 77-86 deal with the serving of summons. This is done through the Cursor or by registered mail, return-receipt-requested.

The following will be present for the "Joinder of Issue"; the Presiding Judge; the Defensor Vinculi; the Notary; the Parties or their Procurators. If the Respondent does not appear, he or she can be declared contumacious and the case may proceed (Art. 89). The "Joinder of Issues" is effected when the Respondent denies the invalidity of the marriage and expresses the intention of contesting the case (Art. 87). If the Respondent agrees that the marriage was invalid, the Defensor Vinculi, nevertheless must contend that the marriage was valid, and, therefore, there will always be an issue in marriage cases. The Tribunal then puts the issue in the form of a question called the "Concordatio Dubii," which in marriage cases will be as follows: "An constet de nullitate matrimonii in causa ex capite" The specific basis upon which the marriage is being impugned is mentioned in the "Concordatio dubii." Cf. Art. 87-92.

12. THE SESSIONS OF THE COURT. The case is developed in "sessions" of the court, e. g. for the hearing of Parties, witnesses, experts, etc. (Art. 106). The Defensor Vinculi will be summoned for each session; the Praeses or the Auditor will preside; the Notary will always be present. The Notary records everything that happens in the sessions: "quod non est in actis, non est in mundo."

13. THE TAKING OF DEPOSITIONS AND TESTIMONY; THE RECORD OF THE TRIAL. Each Party and witness appearing before the court must furnish means of identification (Art. 97). Before giving testimony, the party or witness is required to take an oath to tell the truth and this is done with the hand placed on the Sacred Scriptures (priests take the oath, tacto pectore) (Art. 96). Only the Presiding Judge is permitted to propose questions to the Party or witness (Art. 101). The Defensor Vinculi prepares the questions in advance and gives them to the Presiding Judge in a sealed envelope (Art. 101). The Judge may add further questions, and, if he does so, the Notary marks these as "ex officio" questions (Art. 101). The questions should be brief, simple, to the point and should not suggest the answers (Art. 102).

When the testimony is complete, it is read back to the Party or witness for additions, suppressions, corrections (Art. 104, § 1). Then the Party or witness takes an oath that the truth has been told, and an oath to observe secrecy until the trial has been completed (Art. 104, § 2).

The record of proceedings is divided into two types of material: the acta processus and the acta causae. The acta causae include the depositions of the Parties, testimonies of witnesses and other proofs. These may be drawn up in the vernacular. The acta processus include the decrees of the court, the minutes of the sessions, etc. These are always drawn up in Latin. (Art. 105).

14. CONCERNING PROOFS. The marriage is presumed valid until invalidity has been proved (Canon 1014). The burden of proving the marriage invalid rests with the Petitioner (Art. 94). The proofs which are admitted and which must be evaluated by the Tribunal according to the norms of Canon Law are a) the depositions or testimony of the Parties; b) the testimony of witnesses; c) the testimony of experts; d) public and private documents; and e) presumptions.

15. THE DEPOSITIONS OF THE PARTIES. The Petitioner is generally heard first (Art. 110), though, for a grave reason the Respondent may be heard first (ibidem). After each Party has been interrogated, the Petition is read to each and he is asked to confirm or deny it in all its parts (Art. 113, § 1). The deposition of the consorts given in court is not admissible as proof against the validity of a marriage (Art. 117). The confession of one of the Parties made before the marriage or at a time that is not under suspicion (before the question of bringing the case to trial came up) must be weighed by the Tribunal and can serve as corroborative or supporting proof (Art. 116).

16. THE TESTIMONY OF WITNESSES. All persons may be witnesses unless they are excluded by the law (Art. 118). Some are unfit, others are suspect, others are incapable of testifying, according to Article 119 of the Instruction. The exemption of professional secrecy is recognized (Art. 121, § 2). Relatives are admitted as witnesses in marriage cases (Art. 122), and as a general rule, they make the best witnesses. It is up to the Parties to furnish the names and addresses of witnesses (Art. 125). The Parties may lodge exceptions against a witness (Art. 126). The Procurator-Advocate of a Party may be present for the taking of the testimony of a witness if the Judge deems this necessary (Art. 128). Witnesses may be called ex officio by the Tribunal (Art. 134). Character testimonials are required on all

witnesses (Art. 138, § 1). The rules for evaluating the testimony of witnesses are given in canons 1789-1791. As a general rule, to establish a point, the testimony of two or three qualified witnesses is required.

17. EXPERTS. In cases of impotency and insanity, the opinions of experts are required (Art. 139). In other cases experts must be called in to give an opinion on points which require special training or knowledge, as for example, when the authenticity of handwriting has to be determined (Art. 140). The Defensor Vinculi must be heard before an expert is appointed by the Presiding Judge (Art. 141). Special rules are given as to how the experts are to discharge their duties (Art. 146-154). The Tribunal is not obliged to follow the opinion of the experts, though they must give it consideration, and must state the reasons for rejecting the opinion of the experts (Art. 154).

18. DOCUMENTS. Both public and private documents may be submitted as proof (Art. 155). Among private documents, letters written by the Parties at a time that is not under suspicion have a special value (Art. 163, § 1). In evaluating documents the Tribunal will be guided by the provisions of canons 1814-1818.

19. PRESUMPTIONS. A presumption is a probable conjecture in an uncertain matter (Art. 170). A presumptio iuris is one which is set up in the law and it stands until the opposite is proved (e. g. marriage is presumed valid until invalidity is proved; if a couple cohabits, consummation is presumed, etc.) A presumptio hominis is one that the judge formulates in his own mind in the light of certain and determined circumstances that are directly related to the matter in question (Art. 173). In cases of consent the circumstances before, at and after the marriage are most important. If these are definitely established by the testimony of reliable witnesses, they have a direct bearing on the case, and can serve as the basis for a presumptio hominis in the mind of the judge. The chief presumption in every marriage case is: "Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii . . ." (Canon 1014).

20. PUBLICATION OF THE PROCESS. When all the witnesses have been heard the process is published (Art. 134). Before proceeding to the publication of the process the Judge should inquire of the Parties and of the Defensor Vinculi whether they have any further proofs to offer. The process is published by the decree of the Presiding Judge, and, by it, both Parties are given the right to examine the acts of the case (Art. 175, § 1). The Presiding Judge notifies the Parties and the Defensor Vinculi that the case will be closed on a certain date if no further proofs are offered by that time (Art. 176).

21. THE CONCLUSION OF THE CASE. If no new proofs are suggested before the time mentioned in the publication of the process has expired, the case is closed by a decree of the Presiding Judge (Art. 177). After this, it is only under certain defined circumstances that new proofs can be offered (Art. 178).

22. THE BRIEFS OF THE ADVOCATE AND OF THE DEFENSOR VINCULI. After the decree closing the case has been issued, the Presiding Judge assigns a time for the preparation of briefs by the Advocate and the Defensor Vinculi (Art. 179, § 1). The brief of the Advocate should contain three sections: Species Facti, which is a general narration of the essential circumstances of the case; In Iure which should be a scholarly presentation of the law in the present case; In Facto which applies the law to the present case, drawing upon the testimony of witnesses and the other proofs which have been brought out in the process. The Judge then gives the Defensor Vinculi a specified time in which to reply to the brief of the

Advocate (Art. 180, § 1). Rejoinders are permitted under the moderation of the Presiding Judge (Art. 180, § 2-§ 4). The Presiding Judge then sets a day for the rendering of judgment and notifies the Parties of this (Art. 185). Oral discussion may be permitted (Art. 186).

23. THE SENTENCE. At a day and hour designated by the Presiding Judge, the three judges of the Collegiate Tribunal meet (Art. 198, § 1). Each judge submits his own written conclusions which are to be retained but kept secret (Art. 198, § 2). There may be a moderate discussion; the judges may change their original position; sentence is passed according to the majority opinion; the Ponens writes up the final sentence in Latin (Art. 198, § 3-§ 6). In giving the sentence, the judges must have moral certitude and this must be based upon the proofs that appear in the acts of the case. The judge is bound in conscience, and if he cannot form a judgment for nullity with moral certitude he must rule "non constare de nullitate in causa" (Art. 197).

Diocesan Tribunals would do well to model their decisions upon the decisions of the Sacred Roman Rota. These contain the three sections: Species Facti; In Iure; In Facto. Due reference should be made to the animadversions of the Defensor Vinculi, and, when the Defensor Vinculi is overruled, the reasons should be indicated. Direct reference should be made to the file on the case, and the witnesses should be quoted directly in all matters that are essential to the decision in the case. The conclusion of the sentence will be (Affirmative): CONSTAT DE NULLITATE, etc., or (Negative) NON CONSTAT DE NULLITATE, etc. (Cf. Art. 200).

The sentence is then communicated to the Parties in one of the three ways permitted by the law (Art. 204).

24. APPEAL. Appeal may be made within ten days from the day of notice of publication (Art. 204, § 4). If the decision was affirmative, the Defensor Vinculi must appeal (Art. 212, § 2). The Petitioner may appeal against a negative sentence (Art. 212, § 1). The appeal is lodged with the Tribunal that has just passed sentence on the case (canon 1881) and this Tribunal transmits the appeal to the Court of Second Instance. This appeal must be prosecuted within a month, and the intention to prosecute must be made known to the Tribunal to which appeal is made (canon 1883).

(Form: Formal 1)

TRIBUNAL

(dioecesis)

(via et Numerus)

(Civitas et Status)

In Re: Nullitatis Matrimonii

Ex Capite: _____

vs.

Prot. N. _____

CONSTITUTIO TRIBUNALIS

Cum _____ (Pars Actrix)

supplicem Nostro Tribunali porrexerit libellum, ut ex capite

nullitas declaretur sui matrimonii cum

_____ (Parte Conventa):

Viso canone 1576 C.I.C. necnon articulo 34 Instructionis S. Congr. de
Sac. diei 15 Aug. anni 1936, per praesens decretum eligimus ac deputamus
ad huiusmodi causam pertractandam, una cum Nobis:

IN IUDICES:

IN DEFENSOREM VINCULI:

IN NOTARIUM:

IN CURSOREM ET APPARITOREM:

Jubemus ut electi iudices et Defensor Vinculi coram Nobis compareant
ad libellum de quo agitur admittendum vel reiiciendum (*)

ad normam iuris: hora _____, die _____, mensis _____, anno
_____, in aula huius Tribunalis.

Datum ex aula Tribunalis die _____, mensis _____, anno
_____.

OFFICIALIS ET PRAESES

NOTARIUS

De mandato Praesidis exemplar huius decreti quo constitutum fuit tri-
bunal, infrascriptus Notarius mittit:

Judici: _____

Judici: _____

Defensori Vinculi: _____

die _____, mensis _____, anno _____.

(SIGILLUM)

NOTARIUS

*(Note: -notice concerning the "Joinder of Issues" may also be given at this
point).

(Form: Formal 2)

MANDATE OF PARTY TO PROCURATOR-ADVOCATE

(Name of Party)

(Address)

(City and State)

(Date)

TO: _____
(Name of Procurator-Advocate)

(Address)

(City and State)

By these presents, I, the undersigned, _____,
a Party in the marriage case of:

(name of Petitioner)

vs.

(name of Respondent)

pending before the Tribunal of the (Arch)Diocese of _____,
do hereby appoint:-

(name of Procurator-Advocate)

according to the prescriptions of Canons 1659-1661, to be my Procurator
and Advocate for the purpose of representing me before the above named
Tribunal.

Given at _____, _____ on
this the _____ day of _____, 19____.

(signature of Party)

Signature recognized by:-

PASTOR (NOTARY) (OFFICIALIS)

TRIBUNAL

(dioecesis)

(Via et numerus)

(Civitas et Status)

In Re: Nullitatis Matrimonii
Ex Capite: _____

vs.

Prot. N. _____

DECRETUM ADMISSIONIS LIBELLI SUPPLICIS

Die _____, mensis _____, anno _____, coadunati sunt
infrascripti:

_____, Praeses,
_____, Judex,
_____, Judex
_____, Defensor Vinculi
_____, Notarius

R. D. Patres, viso decreto diei _____, mensis _____, anno _____, quo constituitur Tribunal Collegiale in hac causa, munus commissum acceptant, et cum stabiliter sint constituti, idcirco, approbante Ordinario, iusiurandum de munere fideliter implendo hac occasione non praestant.

Munus Ponentis, assentiente Tribunali, committitur:

R. D. _____.

Visum est quod partes in causa communionem vitae conjugalis non servant.

Perlecto libello a:

(Pars Actrix)

oblato, visa propria competentia ex capite:

attento quod pars legitimam habet personam standi in iudicio, attento quod instantia Partis Actricis, aliquo fundamento innixa est, concordi suffragio illum Iudices admittunt, Defensore Vinculi nihil opponente.

Praeterea, inspecto mandato Procuratoris et Advocati Partis Actricis, in personam:

R. D. _____
eundem tanquam Procuratorem et Advocatum admittunt, approbante Ordinario.

Ideoque RR. Patres mandant ut admissio libelli Partibus communicetur, dato iure articulos apud Tribunal ponendi intra _____ dies.

Porro, RR. Patres mandant ut, articulis acceptis vel elapso ad eos conficiendos tempore, Defensor Vinculi interrogatoria pro partibus conficiat.

Tunc, RR. Patres iubent ut Partes et Defensor Vinculi citentur apud Tribunal pro litis contestatione seu ad sequens dubium subscribendum:

"AN CONSTET DE NULLITATE MATRIMONII IN CAUSA
EX CAPITE _____"

hora _____, die _____, mensis _____, anno _____, in hac aula Tribunalis.

Deinde hoc instrumentum conficitur et a Iudicibus, Defensore Vinculi et ab infrascripto Actuario subscribitur.

Datum, ex aula Tribunalis, _____, hac
_____ die, mensis _____, anno _____.

PRAESES

JUDEX

JUDEX

DEFENSOR VINCULI

NOTARIUS

(SIGILLUM)

TRIBUNAL

vs.

(dioecesis)

(via et numerus)

Prot. N. _____

(civitas et status)

DECRETUM REIECTIONIS LIBELLI SUPPLICIS

Die _____, mensis _____, anno _____, coadunati
sunt infrascripti:

_____, Praeses

_____, Judex

_____, Judex

_____, Defensor Vinculi

_____, Notarius.

R. D. Patres, viso decreto diei _____, mensis _____, anno _____, quo constituitur Tribunal Collegiale in hac causa, munus commissum acceptant, et cum stabiliter sint constituti, idcirco, approbante Ordinario, iusiurandum de munere fideliter implendo hac occasione non praestant.

Munus Ponentis, assentiente Tribunali, committitur:

R. D. _____.

Visum est quod partes in causa communionem vitae coniugalis non servant.

Perlecto libello a:

(Pars Actrix)

oblato, propria competentia recognoscitur ex capite:

Jus Partis standi in iudicio similiter recognoscitur. Tamen, instantia Partis Actricis, utpote fundamento iuridico carens, reiicitur propter rationes sequentes:

Deinde hoc instrumentum conficitur et a Iudicibus, Defensore Vinculi et ab infrascripto Actuario subscribitur.

Datum, ex aula Tribunalis, _____ hac _____
die, mensis _____, anno _____.

PRAESES

JUDEX

JUDEX

DEFENSOR VINCULI

NOTARIUS

(SIGILLUM)

TRIBUNAL

(diocesis)

(via et numerus)

(civitas et status)

In Re: Nullitatis Matrimonii
Ex Capite _____

vs.

Prot. N. _____

CITATION FOR JOINDER OF ISSUES

To:

Dear _____:

_____, Petitioner, has requested the Tribunal of the _____ to declare as null and void his/her marriage to the Respondent on the grounds:

The Tribunal of the _____ is a Church Court established to decide matters of this kind according to the laws of God and the laws of the Catholic Church.

The petition of _____ has been accepted for trial by this Tribunal. Before proceeding further with the case, we are required by the law of the Church to cite both parties of the marriage for the joining of issues, that is, to set precisely the grounds of the petition and to give _____, the Respondent, a chance to affirm or deny the claims and to name witnesses to confirm his/her stand.

Please then, in the name of truth and justice, be so good as to heed the citation which follows, at least in one of the alternatives.

CITATION

I, the undersigned, by these presents respectfully cite:

whose address is _____, to appear before this Tribunal at:

on the _____ day of _____, 19____, at _____ o'clock, for the purpose of joining the issues and settlement of doubts in the case in which: _____, Petitioner contends that his/her marriage to: _____, Respondent is null and void from the beginning due to:

1. If you cannot appear in person, you may be represented by your Procurator and Advocate if you wish to have one. For this purpose you may name any priest you care to name.

2. If because of great inconvenience caused by distance or for some other serious reason you are unable to appear before us in person or through your Procurator, please inform us by letter as to whether or not you affirm or deny the claims made by the Petitioner, or whether you are willing to leave the case to the justice of the Tribunal.

3. If we do not hear from you before the time set above or if you do not appear, we shall be obliged to declare you in contempt of this Tribunal and the case will proceed.

You are hereby informed of your right to suggest questions to be asked of the other party and the witnesses in this case. These questions should reach us before _____.

Your cooperation will be deeply appreciated.

Given at _____, on this the _____ day of _____, 19____.

PRESIDING JUDGE

NOTARY

(137)

TRIBUNAL

(dioecesis)

(via et numerus)

(civitas et status)

In Re: Nullitatis Matrimonii
Ex Capite _____

vs.

Prot. N. _____

CONTESTATIO LITIS

Coram infrascripto Praeside (Auditore) huius Tribunalis, legitime citati comparuerunt:

_____, Defensor Vinculi

_____, Pars Actrix

_____, Procurator Partis
Actricis

_____, Pars Conventa

_____, Procurator Partis
Conventae

Praeses Partes certiores facit de personis Tribunalis et de testibus inducendis et de eorum iure interponendi exceptiones. Partes nullam oppositionem ponunt nec exceptionem vel reprobationem postulant.

Praeses reconciliationem inter Partes attentat. Sed inutiliter.

Deinde inter praesentes concordatum est dubium sub hac formula:

"AN CONSTET DE NULLITATE MATRIMONII IN CAUSA EX CAPITE:

Tunc, Praeses jubet Partem Actricem in arca huius Tribunalis summam _____ dollarium deponere, et mandat ut Defensor Vinculi interrogatoria conficiat pro partibus et testibus in causa, videlicet:

Interea omnes subscribunt una cum me Notario.

Datum _____,
die _____ mensis _____,
anno _____.

(SIGILLUM)

PRAESES (AUDITOR)

DEFENSOR VINCULI

NOTARIUS

DEFENSOR VINCULI EXHIBET INTERROGATORIA

NOTE: The following statement appears on the outside of the sealed envelope in which the Defensor Vinculi presents his questionnaires to the Tribunal:

_____ _____ _____	_____ _____ _____
TRIBUNAL	In Re: Nullitatis Matrimonii
	vs.
	Prot. N. _____

_____, Defensor Vinculi in causa supra nominata rite deputatus, exhibet inclusa interrogatoria, causa et obsignata, et nonnisi in actu examinis a Iudice aperienda, et instat ut super iisdem examinetur:

servata forma a iure statuta, alioquin protestatur, etc. Haec cum facultate alia addendi, delendi, corrigendi, etc.

Datum: _____	s/ _____
Die _____ mensis _____	DEFENSOR VINCULI
anno _____	(sigillum)

TRIBUNAL

(dioecesis)

(via et numerus)

(civitas et status)

In Re: Nullitatis Matrimonii
Ex Capite _____

vs.

Prot. N. _____

CITATIO DEFENSORIS VINULI

Infrascriptus Praeses, hisce praesentibus citat:

_____, Defensorem Vinculi
ut ille coram Nobis compareat apud aulam huius Tribunalis:

(via, numerus, civitas, status)

hora _____, die _____, mensis _____, anno _____

1. Ad contestationem litis, sin minus ad
dubium subscribendum;
2. Ad depositionem accipiendam Partis Actricis;
3. Ad depositionem accipiendam Partis Conventae;
4. Ad testimonium accipiendum testis:

5. Ad: _____.

in causa in qua:

_____, Pars Actrix

accusat matrimonium contractum cum:

_____, Parte Conventa

de nullitate ex capite:

_____.

Datum _____, die _____ mensis _____

anno _____.

PRAESES (AUDITOR)

NOTARIUS

(SIGILLUM)

TRIBUNAL

(diocese)

(address)

In Re: Nullitatis Matrimonii
Ex Capite _____

vs.

Prot. N. _____

CITATION OF WITNESS

To: _____

Dear _____ :-

We come to you for help.

A case is now pending before the Tribunal of the Diocese of _____, in which it is contended that the marriage between _____

_____, Petitioner
and _____

_____, Respondent
was null and void from the beginning. If such is the case, it is the duty of this Tribunal in justice to declare it so, since it is the role of the Tribunal to decide cases of this kind according to the laws of God and His Church. It is necessary, however, that such claims be proved, otherwise the Tribunal will be bound in conscience to hand down a sentence favoring the validity of the marriage.

You have been named a witness in the case, and, therefore, we are required by the law of the Church to cite you to appear before this Tribunal to give testimony concerning the matter. Please do not let this citation cause you any alarm. Your testimony will be heard in the presence only of the priests of the Tribunal. No one else, not even the parties to the marriage in question, will be permitted to be present when you testify. Your testimony will be treated confidentially by the priests of the Tribunal and we will even ask that you reveal to no one the questions asked of you and the answers given.

If you can appear on the day and at the time designated below, the Party who called you as a witness and the priests of the Tribunal of the Diocese of _____ will be very grateful.

Having offered you this explanation, it is now our duty to issue the following formal citation required by the law of the Church:

By order of the undersigned _____, Judge of the Tribunal of the Diocese of _____, you are cited to appear before the Tribunal of the Diocese of _____, the address of which is _____ at _____ o'clock on _____, the _____ day of _____, 19____, for the purpose of giving testimony in the case of

_____, Petitioner
and _____, Respondent
in which it is contended that this marriage is null and void due to:

_____.
Failure to heed this citation will oblige us to declare you in contempt of this Tribunal and we will proceed with the case.

All persons appearing before this Tribunal are kindly requested to bring means of identification.

Given at _____, on this the _____ day of _____, 19____.

(SIGILLUM)

PRAESES/AUDITOR

NOTARY

TRIBUNAL

vs.
_____.

(dioecesis)

(via et numerus)

Prot. N. _____

(civitas et status)

SESSIO

Die _____ mensis _____, anno _____, in aula sessionum
huius Tribunalis, habetur sessio _____ in supra nominata causa.

Sessio aperitur hora _____.

Presentes sunt:

_____, Praeses
_____, Judex
_____, Judex
_____, Defensor Vinculi
_____, Notarius

Rite citatus (a) (voluntarie sine citatione) comparet:

_____(Pars Actrix) (Pars Conventa)(Testis)

Praeses iusiurandum petit, quod deponens tactis Ss. Dei Evangeliiis,
praestat de veritate dicenda.

Deinceps, postulante Defensore Vinculi, Praeses schedam adaperit
quam idem Defensor Vinculi clausam et obsignatam exhibuerat continentem
interrogatoria deponenti proponenda, et ad examen eiusdem procedit, qui
(quae) ad singulas quaestiones respondet uti apparet in sequentibus paginis
actorum.

Absolute examine, de mandato Praesidis integra depositio clara voce
perlegitur deponenti a me Notario et Praeses interrogat an deponens habeat
aliquid addendum, delendum, mutandum, corrigendum. Deponens respondet:-

Deinde libellus supplex perlegitur parti quae rogatur an eum confirmet
in omnibus partibus vel non. Pars autem respondet:-

Deinde deponens iusiurandum dat de veritate dicta et de secreto ser-
vando.

Ex hac sessione speciatim notandum est:

Tunc, de mandato Praesidis, audito Defensore Vinculi, sessio
clauditur hora _____. Ego, Notarius hoc instrumentum confeci
in forma, quod omnes subsignant.

_____, Praeses
Datum, _____, Judex
_____, Judex
die _____ mensis _____
anno _____.
_____, D. Vinculi
(SIGILLUM) _____, Notarius

TRIBUNAL

(dioecesis)

vs.

(via et numerus)

Prot. N. _____

(civitas et status)

ALIENUM TRIBUNAL VOCATUR IN ADIUTORIUM
LITTERAE ROGATORIAE

Excellentissimo et Reverendissimo

Ordinario _____

Excellentissime Domine:

Infrascriptus Praeses Tribunalis in supra nominata causa enixe rogat Excellentiam Vestram Reverendissimam, ad normam canonis 1570, ut dignetur iudicialiter audire partem (vel partes; testem vel testes) quorum nomina et domicilia infra indicantur, constitutis Auditore, Defensore Vinculi et Notario, iuxta interrogatoria a Defensore Vinculi huius Tribunalis exarata quae, clausa et obsignata, una cum hisce litteris transmittuntur.

Quodsi testis, ad normam canonis 1770, § 2, 4^o in loco ita dissito a tribunalis sede commoratur, ut sine gravibus impensis neque ipse iudicem adire, neque a iudice adiri possit, faveat Excellentia Vestra Reverendissima aliquem sacerdotem dignum et idoneum deputare, ut cum assistentia alicuius, qui actuarii munere fungatur, examen horum testium perficiat, transmissis pariter eidem interrogationibus faciendis, datisque opportunis instructionibus. De quibus circumstantiis extraordinariis dignetur Excellentia Vestra nos certiores reddere.

Faveat Excellentia Vestra testimonium de probitate, religiositate et veracitate partis (vel testis) excussae addere actis ad cancellariam huius Tribunalis mittendis.

Intera omnia fausta Excellentiae Vestrae Reverendissimae adeprecor.

1. _____

2. _____

3. _____

4. _____

5. _____

Datum _____, die _____ mensis _____
anno _____.

PRAESES

(SIGILLUM)

NOTARIUS

TRIBUNAL

(dioecesis)

(via et numerus)

(civitas et status)

In Re: Nullitatis Matrimonii

Ex Capite

vs.

Prot. N.

CONSTITUTIO COMMISSIONIS ROGATORIAE

Acceptis litteris Tribunalis _____ quibus
rogatur, ad normam canonis 1570, ut partem (vel partes; testem vel testes)
audiantur in supra nominata causa, hisce praesentibus constituimus Tri-
bunal ad partem (vel partes; testem vel testes) audiendos quorum nomina
infra indicantur.

In Auditorem R. D. _____

In Def. Vinculi R. D. _____

In Notarium R. D. _____

In Cursorem _____

Auditor det iusiurandum coram Notario, alii dent iusiurandum coram
Auditore.

Testes audiendi: _____

Datum, _____, die _____ mensis _____
anno 19____.

ORDINARIUS

NOTARIUS

(SIGILLUM)

IUSIURANDA

1. Ego infrascriptus in Auditorem electus, spondeo voveo ac iuro me
munus mihi commissum rite et fideliter impleturum, quavis personarum
acceptatione posthabita atque officii secretum servaturum iuxta canones.
Sic me Deus adiuvet.

s/ _____

AUDITOR

Coram me, in loco _____
die _____ mensis _____ anno _____

NOTARIUS

2. Ego infrascriptus in Defensorem Vinculi (Notarium, Curosorem)
electus iuro me munus mihi commissum rite et fideliter impleturum quavis
personarum acceptatione posthabita atque officii secretum servaturum iuxta
canones. Sic me Deus adiuvet.

s/ _____

DEFENSOR VINCULI

Coram me, in loco _____
die _____ mensis _____
anno _____

s/ _____

NOTARIUS

s/ _____

CURSOR

AUDITOR

(Sigillum)

TRIBUNAL

(dioecesis)

(via et numerus)

(civitas et status)

In Re: Nullitatis Matrimonii

Ex Capite _____

vs.

Prot. N. _____

PUBLICATIO PROCESSUS

Cum processus in supra nominata causa sufficienter instructus videatur, audito Defensore Vinculi, iubemus acta publicari ad normam iuris, ideoque partibus earumque advocatis facultatem concedimus inspiciendi testimoniationes ceterasque omnes probationes quae in actis reperiuntur, quaeque secretae permanserunt, et petendi exemplar.

Tempus utile _____ dierum partibus ac Defensori Vinculi praefinimus et statuimus ut possint, si velint, nova documenta exhibere vel argumenta exponere, quibus allatae ab ipsis probationes et impugnationes roborentur, explicentur, compleantur. Quo tempore expleto, deveniri potest ad conclusionem in causa, servatis de iure servandis.

Praesens Decretum partibus et Defensori Vinculi notum fiat.

Datum ex aula Tribunalis die _____ mensis _____ anno _____.

(SIGILLUM)

PRAESES

NOTARIUS

PUBLICATION OF THE PROCESS

Since the process in the above named case seems to be sufficiently compiled, having heard the Defender of the Bond, we hereby order the publication of the acts of the case. You have the right to visit our office and inspect all the testimony and other proofs submitted in the case, and even of requesting a copy of these acts if you so wish.

You are also given _____ days, within which time you may submit additional witnesses, documents and proofs by which you think the case may be benefitted. If you have no further proofs, etc. to offer, you may let us hear from you right away, or, in the event that we do not hear from you by the expiration of the time allotted in this decree, we shall proceed to the conclusion of the case.

Given at _____, on this the _____ day
of _____, 19____.

PRAESES

NOTARY

Infrascriptus actuarius de mandato Praesidis exemplar huius decreti Defensori Vinculi et partibus misit die _____ mentis _____, anno _____.

NOTARIUS

(SIGILLUM)

<u>TRIBUNAL</u>	In Re: Nullitatis Matrimonii
<u>(dioecesis)</u>	Ex Capite _____
<u>(via et numerus)</u>	<u>vs.</u>
<u>(civitas et status)</u>	Prot. N. _____

PUBLICATIO PROCESSUS

Cum processus in supra nominata causa sufficienter instructus videatur, audito Defensore Vinculi, iubemus acta publicari ad normam iuris, ideoque partibus earumque advocatis facultatem concedimus inspiciendi testimonies ceterasque omnes probationes quae in actis reperiuntur, quaeque secretae permanserunt, et petendi exemplar.

Tempus utile _____ dierum partibus ac Defensori Vinculi praefinimus et statuimus ut possint, si velint, nova documenta exhibere vel argumenta exponere, quibus allatae ab ipsis probationes et impugnationes roborentur, explicentur, compleantur. Quo tempore expleto, deveniri potest ad conclusionem in causa, servatis de iure servandis.

Praesens Decretum partibus et Defensori Vinculi notum fiat.

Datum ex aula Tribunalis die _____ mensis _____ anno _____.

(SIGILLUM)	<u>PRAESES</u>
	<u>NOTARIUS</u>

PUBLICATION OF THE PROCESS

Since the process in the above named case seems to be sufficiently compiled, having heard the Defender of the Bond, we hereby order the publication of the acts of the case. You have the right to visit our office and inspect all the testimony and other proofs submitted in the case, and even of requesting a copy of these acts if you so wish.

You are also given _____ days, within which time you may submit additional witnesses, documents and proofs by which you think the case may be benefitted. If you have no further proofs, etc. to offer, you may let us hear from you right away, or, in the event that we do not hear from you by the expiration of the time allotted in this decree, we shall proceed to the conclusion of the case.

Given at _____, on this the _____ day of _____, 19____.

	<u>PRAESES</u>
	<u>NOTARY</u>

Infrascriptus actuaris de mandato Praesidis exemplar huius decreti Defensori Vinculi et partibus misit die _____ mentis _____, anno _____.

(SIGILLUM)	<u>NOTARIUS</u>
------------	-----------------

THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST
 IN THE YEAR 1649
 BY JOHN BURNET
 IN TWO VOLUMES
 LONDON, 1724
 Printed by J. Sturges, at the
 Printers Office, in St. Dunstons Church-yard
 (MDCCLXXIV)

THE HISTORY OF THE
 REIGN OF KING CHARLES THE FIRST
 IN THE YEAR 1649
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 LONDON, 1724

(Form: Formal 14)

TRIBUNAL

(dioecesis)

(via et numerus)

(civitas et status)

In Re: Nullitatis Matrimonii

Ex Capite _____

vs.

Prot. N. _____

CONCLUSIO IN CAUSA

Cum acta in supra nominata causa decreto Nostro diei _____, mensis _____ anno _____ publicata fuerint, ad normam cc. 1858 et 1859 atque art. 176 Instructionis S. C. de Sacramentis diei 15 Augusti, 1936, et

Cum Defensor Vinculi et partes declaraverint se nil exhibendum aut deducendum habere, (vel)

Cum elapsum sit tempus utile in dicto Decreto concessum,

Nos, perpenis omnibus actis, partium ac testium depositionibus et adnexis documentis, cum causa satis instructa videatur, decernimus ad conclusionem in causa esse deveniendum, eamque praesenti Decreto statuimus et pronuntiamus.

Ad normam iuris concedimus partibus earumque Advocatis tempus utile _____ dierum ad defensiones suas sive allegationes exhibendas, servatis servandis.

Deinde mandamus R. D. Defensorem Vinculi ut intra _____ dies a recepta partium defensione animadversiones huic Tribunali exhibeat.

Praesens decretum Defensori Vinculi et partibus statim notum fiat.

Datum ex aula Tribunalis die _____, mensis _____, anno _____.

(SIGILLUM)

PRAESES

NOTARIUS

Since the acts in the above entitled case were published according to the requirements of law by our decree of _____, 19_____, and,

Since the Defender of the Bond and the parties declare that they have nothing further to add to the case, (or)

Since the time allowed in the aforesaid has elapsed,

We, having weighed all the testimony, documents and other acts of the case, judge that the case should be concluded, and, by these presents, so declare it concluded.

Then, as is our duty, we assign to the parties and their Advocates _____ days in which to prepare their arguments and defense, which are to be presented to the Tribunal in writing.

Moreover, we hereby order the Defender of the Bond to prepare his animadversions and to present them to the Tribunal within _____ days after receiving the defense of the parties.

Given at _____, on _____, 19____.

PRAESES

NOTARY

Copy sent to Defensor Vinculi, to Procurator-Advocate of Petitioner and to Respondent on _____, 19_____.

NOTARIUS

(SIGILLUM)

JAMES PAUL SMITH

No.

vs

MARY ANN JONES

EX CAPITE: intentionis contra
prolis et sacramenti

TO THE HONORABLE MATRIMONIAL COURT
FOR THE ARCHDIOCESE OF NEW ORLEANS:

I, the undersigned James Paul Smith, the son of Harvey T. Smith and Ella Sanchez Smith, a Catholic and member of the Parish of St. Paul, New Orleans, residing at 1706 Fifteenth Street, New Orleans, with home phone number CHestnut 8-6687 and office phone number MAgnolia 7-4632, respectfully represent to the Honorable Matrimonial Court:

FIRST

That plaintiff was born on November 6, 1918 and baptized on November 20, 1918 in the Church of St. Mary Assumption, New Orleans; that at the age of twenty-two plaintiff was married to Mary Ann Jones, Protestant, now residing at 2892 North Florida Avenue, New Orleans, telephone number GALvez 3-7798, on the 9th day of September, 1940 in the parochial rectory of St. Andrew Church, New Orleans, Louisiana. This marriage was contracted with a dispensation (#40-898, Archdiocese of New Orleans) from the impediment of mixed religion and, ad cautelam, the impediment of Disparity of Worship. Authentic copies of Baptismal, Marriage and Dispensation records are attached hereto and made part of this petition.

SECOND

Plaintiff further represents that he knew the defendant for two years prior to the marriage and that he entered marriage with her after a pre-marital indiscretion which she used to urge him into marriage. The union lasted two years during which plaintiff and defendant argued and fought continuously. There were no children born of the union which was terminated by divorce in the Civil Court on January 25, 1944. A copy of this divorce decree is attached hereto and made part of this petition.

THIRD

Petitioner further shows that before his marriage to the defendant and at the time of the marriage said defendant positively excluded all possibility of issue by a determined, willful intention "contra bonum prolis". The following excerpts from letters written by the defendant "tempore non suspecto" which are appended hereto and made part of this petition show the mind of the defendant at the time of the marriage.

Exhibit 1. Jack,

I did not want intercourse with you because you refused to use preventatives, in spite of the fact that we agreed before we were married that we would not have any children...

3/4/43

/s/ Mary Ann

Exhibit 2. Dear James

..... she (i. e. Mary Ann) finally came to some kind of agreement with you, that she would agree to her terms about children and divorce.

6/12/47

Sincerely,
Pat

FOURTH

Plaintiff further represents that defendant's exclusion of issue was deeply rooted in her determination to set aside the essential properties of marriage, namely, its unity and indissolubility; that she did not expect the marriage to last and intended only a temporary union. Defendant gave evidence of this in a letter addressed to the Reverend Morris Jackson, pastor of St. Peter Church, whom petitioner first approached for help in having his case adjudicated; the complete letter is attached hereto and made part of this petition:

Exhibit 3. Dear Father Jackson

I must admit that so much of what James has told you is true and I am anxious for the annulment to be granted. I will be happy to cooperate in any way I can.

Being a Protestant I never did share his views on birth control and divorce and he knew full well we could not agree.

I most certainly did have in mind to end our marriage in divorce (and I told him so) providing it was unsuccessful. Although I was infatuated with him and foolish, I had enough sense to know and realize that he was poor husband material.

3/2/47

/s/

Very truly yours
Mary Ann Jones

FIFTH

Petitioner further represents that he intercepted a letter written by defendant two days before her marriage to plaintiff, in which she asked one "Pat" to deliver a sealed letter to a party named "Ed", telling "Ed" that she was marrying plaintiff to hurt herself, but that she would divorce plaintiff and marry "Ed" if and when he (Ed) succeeded in getting a divorce from his (Ed's) wife. Plaintiff alleges that this letter was given to Father Jackson, referred to above, who has lost or misplaced same and is unable to produce it.

SIXTH

Plaintiff further alleges that defendant's mind and will in entering marriage with the plaintiff invalidated said marriage by virtue of Canon 1013, paragraphs 1 and 2:

"Matrimonii finis primarius est procreatio atque educatio proles; essentielles matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano perculiarem obtinent firmitatem ratione sacramenti. "

SEVENTH

In corroboration of the above stated allegations Plaintiff offers the following witnesses who have positive knowledge of the facts in the case:

Mr. Arthur Kuhn, 886 Northshore Drive, Chicago, Ill.
Mrs. Amelia Wright, 16 Lake Avenue, New Orleans, La.
Mrs. Peter Cloud, Orangeville, Mississippi
The Reverend Morris Jackson, Pastor, St. Peter Church,
New Orleans, La.

EIGHTH

Plaintiff agrees and promises to pay in full the present and future costs of this litigation.

WHEREFORE, plaintiff prays that he may have the services of the Honorable Matrimonial Court, that this petition be accepted and the action prosecuted; that the Reverend Roland Murphy be recognized as his duly appointed Procurator-Advocate in this action; that the defendant be cited to appear and answer this petition; that witnesses be called; and that after due process according to the Law of the Church, there be a final judgment in favor of the plaintiff and against the defendant, decreeing the nullity of the marriage between them and declaring the plaintiff free to contract another marriage.

New Orleans, Louisiana
October 18, 1952

James Paul Smith
Plaintiff

Your petitioner with respect represents to the Honorable Court that he has this day appointed and authorized the Reverend Roland Murphy, St. Paul Parish, New Orleans, to be his Advocate-Procurator, with all the rights and privileges attached to those offices by law without exception, to prosecute this action before the Tribunal of the First Instance as well as before the Tribunal of the Second Instance.

New Orleans, Louisiana
October 18, 1952

James Paul Smith

The above petition and mandate of James Paul Smith were signed by him in my presence and I hereby certify to the authenticity of his signature.

New Orleans, Louisiana
October 18, 1952

John Redmond
Pastor, St. Paul Parish

I accept herewith the office of Advocate-Procurator as provided in the above petition and mandate. I received my appointment to serve as Advocate and/or Procurator before the Matrimonial Court of the Archdiocese of New Orleans from His Excellency, the Most Reverend Joseph Francis Rummel, on September 1, 1950.

New Orleans, Louisiana
October 18, 1952

Roland Murphy
Advocate-Procurator
St Paul's Church
Address

NOTA: If the priest who is willing to accept the office of Advocate-Procurator has not received from the Ordinary or the Court the necessary approval, either for a period of time or a number of cases, it will be necessary to change the above sample mandate to include a request of the Court that the appointment of the Advocate-Procurator be approved. Likewise, the acceptance of the office by the priest will be changed to include a request for approval; this can be done simply by changing the first words to "If it please the Court to approve my appointment I accept herewith, etc."

DOCUMENTS mentioned in the petition will be appended. They should be carefully marked and numbered if necessary.. Thus to this petition would be attached: Baptismal Record, Marriage Record, Dispensation Record, Divorce Decree, Exhibits 1, 2, and 3 (letters referred to in petition).

SAMPLE DEFENSE BRIEF of the Advocate-Procurator in a Formal
Marriage Case

JAMES PAUL SMITH

No. 28/52

vs

MARY ANN JONES

EX CAPITE: intentionis contra
bona prolis et sacramenti.

THE DEFENSE BRIEF OF THE ADVO-
CATE-PROCURATOR IN THE ABOVE
NUMBERED MATRIMONIAL CASE.

May it please the Honorable Judges and the Defender of the Bond of the Matrimonial Tribunal of the Archdiocese of New Orleans to hear and consider carefully the following arguments bearing out the invalidity of the marriage contracted by James Paul Smith, Plaintiff in this cause, and Mary Ann Jones, Defendant:

I

SPECIES FACTI: James Paul Smith, Catholic, entered into marriage with Mary Ann Jones, Protestant, in the Rectory of St. Andrew Parish, New Orleans, Louisiana, on September 9, 1940, a dispensation from the impediment of disparity of worship "ad cautelam" having first been obtained. No formal engagement preceded the marriage, although the parties had known each other for about two years. The marriage was entered into hurriedly and was a surprise to the friends and acquaintances as well as the families of the parties. It was not a happy union: they quarreled frequently from the beginning, and separated and reconciled three times, before separating permanently in October of 1942. By mutual agreement the Defendant, Mary Ann Jones sought and received a Divorce in the II Civil District Court of the Parish of Orleans, Louisiana, on January 25, 1944.

James Smith had not been anxious to enter the marriage but was importuned, if not forced into it, by Mary Ann Smith. He was aware that Mary Ann Smith had strong convictions against children and in favor of divorce but dismissed them from his mind. Having come to the conclusion that he should marry her and being unaware that her perverted mind and will could have any effect on the marriage bond, he trusted that "everything would work out all right in the end." After the civil divorce had been obtained James Smith sought the advice of Father Morris Jackson in 1945 who offered to help him investigate his marriage. Consultations with the plaintiff and correspondence with various persons led Father Jackson to the conclusion that the marriage was probably invalid and he advised James Smith to bring his case before this Honorable Tribunal.

(In this section of the brief, the complete history of the marriage, including acquaintance, courtship, marriage ceremony, married life, termination of the union, etc. should be given. It should be brief and concise, yet it should contain all the pertinent facts; it should be sufficient to give the judge and the Defender of the Bond a clear background for the understanding and study of the parts of the Brief which follow.

IN JURE: The following canons apply in the case at hand:

Canon 1013 #1. "Matrimonii finis primarius est procreatio atque educatio prolis; secundarius etc."

#2. "Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae etc."

Canon 1081 #2. "Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat etc."

Canon 1086 #2. "At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad conjugalem actum etc."

The consent whereby two parties enter into a marital union will not in fact effect the matrimonial bond unless that consent is true matrimonial consent embodying all the qualities required under the Divine Law and Canon Law. If a party, therefore, in giving his consent actually excluded all right to lawful marital intercourse or actually intended only a temporary union, the marriage would be invalid. The law is succinctly summarized in many Rotal Decisions, e. g.

"Invalide contrahit qui quocumque modo solubile matrimonium inire intendit, pariter, qui in contrahendo detrectat alteri parti tradere ius exclusivum in suum corpus vel recusat id tradere in ordine ad generationem prolem." (S. R. Decisiones 1937; Dec. XLVIII, p. 486.)

Relative to the exclusion of the "bonum prolis" in a consent which is alleged to be defective, it is imperative to distinguish between the right itself to the procreation of children and the use of that right. The right pertains to the substance of the contract; not, however, the use of that right. To deny the right renders a marriage invalid; to intend the abuse of that right, while gravely sinful, does not affect the validity of the marriage. This all important distinction is insisted upon in all Rotal Decisions where the marriage is attacked on these grounds. (Vide, e. g. S. R. Decisiones 1937; Dec. II, p. 8; Dec. XXVI, P. 282. etc.)

In order that a marriage be invalid it is necessary that by a positive act of the will the consent be so restricted that the indissolubility of the contract is excluded. Such an exclusion can be made either by a formal condition made known to the other party (Canon 1092) or by a mere internal act of the will (Canon 1086 #2.). In the latter case the exclusion is difficult to prove and the confession of the party is not sufficient but must be corroborated by the testimony of persons who had knowledge "tempore non suspecto" and from circumstances preceding, concomitant with and consequent upon the marriage. (Cf. S. R. Decisiones II, p. 8)

(In this manner the Advocate-Procurator states and explains the law and the jurisprudence on the law. The above sample is meant to indicate the manner in which this is done; it is not a complete nor necessarily adequate treatment of the law, but may prove helpful as a model. If you can pin-point the law in question and lay it bare before the judges, you strengthen your case as well as merit the respect of the Court.)

IN FACTO: (APPLYING THE LAW TO THE FACTS): There is documentary evidence as well as sworn testimony of reliable witnesses in support of petitioner's allegations that true matrimonial consent was lacking because the Defendant excluded the primary end of marriage as well as one of its essential properties, namely, its indissolubility. The court was very careful, both through the questions of the Defender of the Bond and by "ex officio" questions to determine whether the defendant meant to exclude the right to the conjugal act or merely intended to abuse the right. That her real intention prior to marriage and during the union was to exclude the right itself is borne out by a letter from the Defendant "tempore non suspecto" in which she said, "I did not want intercourse with you because you refused to use preventatives. . . . that we agreed. . . . we would not have any children." A letter of Mrs. Peter Cloud, in 1947, supports this contention: "she (i.e. Defendant) finally came to some agreement with you, that she would finally contract this marriage with you if you would agree to her terms about children and divorce."

The intention to exclude the right itself is also evident from the testimony of Mrs. Amelia Wright:

- Q. How strong was your friendship with the Defendant?
 A. We were the closest of friends, closer than sisters. I do not think there was anything that went on which we did not reveal to each other. We had no secrets of any kind.
- Q. Did Mary Ann Jones tell you her views on marriage?
 A. Yes, we frequently discussed marriage.
- Ex Officio. Q. Were your views alike or identical?
 A. Oh, no. I disagreed with her completely nearly all the time.
- Q. On what points specifically did you disagree?
 A. On Birth Control, on Divorce, on the Sanctity of marriage, fidelity in marriage; really, on all the things I considered most important about marriage.
- Q. Did you ever change her mind on any of these things?
 A. As far as I know, not on a single one.
- Q. Did Mary Ann Jones like children?
 A. No, she had no time for them whatsoever.
- Q. Did she look forward to having children of her own?
 A. Absolutely not. She not only believed in Birth Control, she always insisted she would never marry a man who did not promise to guarantee her she would have no children. She almost hated children. She once told me, in the heat of an argument, that if she couldn't get married without having children, she just wouldn't marry.

The testimony of this witness, Mrs. Amelia Wright, continues in the same vein to show most conclusively that Defendant not only was determined never to have children, but was positively willing to forego the pleasures of married life if that were the only way of avoiding children. She made this clear to her close friend, Mrs. Amelia Wright, on several occasions (p. 48; 49) and to Mrs. Peter Cloud (p. 72) as well as to Father Jackson at a time when she did not realize the full import of her declarations (p. 36).

The mind of the Defendant was no less vicious and erroneous as regards the indissolubility of marriage. She not only did not believe in the indissolubility of marriage but was determined never to let herself "be trapped into thinking, much less avowing, to enter a permanent and indissoluble union." (p. 18) The positive exclusion of this property of marriage by willful intention is evident in many places in the testimony of the various reliable witnesses who were heard. For example, Mr. Arthur Kühn heard the Defendant express herself openly at a party just previous to the marriage (two weeks):

Q. Do you think Mary Ann Jones really thought marriage should be a permanent union?

A. If she did, she never acted like it or spoke like it.

Q. Relate as best you can Mary Ann Jones' statements on the night of this party.

A. She declared that she didn't mind who knew it because she had already told Jack (James) and she would tell every man she married--I think those were her exact words--that she did not believe in that bunk about marriage for keeps, and that it would be clearly understood that they were to remain married only as long as they both were agreeable to continuing together. Etc.

Most compelling as evidence is the testimony of Father Jackson who saw and testified to the contents of a letter written by Defendant to one of her paramours two days previous to the marriage in which said Defendant promised to marry this same paramour after he (the paramour) had obtained a divorce from his wife of the time. This person, though refusing to appear and give his testimony, yet corroborated Father Jackson's testimony and affirmed the contents of the letter (unwittingly, certainly) in the letter by which he refused to answer the summons to appear and give testimony. (p. 82.)

(Note carefully that this is the most important part of the Brief and finds its weight in pulling out of the testimony the real proof of the allegations of the Plaintiff. This requires a careful study of the Acts of the Case which is permitted to the Advocate-Procurator after the decree of the Judge ordering the Publication of the Proceedings--Art. 175 of the Instruction. It will ordinarily be necessary to go to the Seat of the Tribunal to do this unless your Tribunal is equipped to supply copies of the Acts. It must be remembered that the above is but a sample of the method of applying the law to the facts and thereby proving the contentions of the Plaintiff. It is brief and not necessarily accurate; however, it is hoped that it does show how one would prove the "positive act of the will" of the Defendant whereby she excluded the "omne ius ad actum coniugalem. . ." and the "indissolubilitas matrimonii" which would render the marriage invalid. The entire brief, ordinarily, will run from ten to twenty pages most of which will be devoted to this section. It may often be necessary in this section to quote the Rotal Decisions or Reliable Authors to indicate that the law is being applied according to accepted Jurisprudence.)

Thus it appears evident that the Defendant prior to the marriage, up to and during the ceremony (this would be proved in the above, through testimony and documents) had a positive will whereby she excluded the conjugal right as well as the indissolubility of the marriage. There are documents and testimony, both weighty and conclusive, giving evidence

of this positive act of the will. The veracity of the witnesses is unquestioned; the authenticity of the documents is substantiated and their contents verified by testimony.

May it please the Honorable Tribunal to find the above arguments conclusive and that after mature consideration to render a decision of
CONSTAT DE NULLITATE MATRIMONII IN CASU.

New Orleans, Louisiana
May 6, 1953

Roland Murphy
Roland Murphy, Advocate-Procureur

JAMES PAUL SMITH

vs

MARY ANN JONES

No. 28/52

EX CAPITE: intentionis contra
bona prolis et sacramenti.

THE ANIMADVERSIONS OF THE DEFENDER
OF THE BOND IN THE ABOVE-NUMBERED
MATRIMONIAL TRIAL

May it please the Judges of the Metropolitan Tribunal of the Archdiocese of New Orleans to hear and consider the following arguments in support of the validity of the marriage of James Paul Smith, Petitioner in this cause, and Mary Ann Jones, Defendant:

I

IN FACTO. James Paul Smith, a Catholic, married Mary Ann Jones, a Protestant, in the Priest House of the parish of St. Andrew, New Orleans, on September 9, 1940. The necessary dispensation for a mixed marriage had been duly obtained from the Ordinary. The marriage did not last long: after frequent quarrels, separations and reconciliations, the couple separated completely just two years later. The defendant obtained a civil divorce in the II Civil District Court of the Parish of Orleans, Louisiana, on January 25th, 1944. The divorce was not contested.

Petitioner, in his introductory libellus, alleges that he was coaxed into marriage by the defendant. He further alleges that he knew that Mary Ann Jones did not want children and that she believed in divorce, but married her anyway in the hope the union would prove a happy one. After consulting with a number of priests James Paul Smith entered suit before this tribunal on June 12, 1952, asking that his marriage to Mary Ann Jones be declared invalid by reason of an invalidating intention on the part of said defendant, namely, an intention to exclude two of the "goods" of marriage, offspring and permanence.

(Note. In this section of the Animadversions the Defender of the Bond gives a brief but complete history of the marriage, beginning with courtship and leading up to the submitting of the plaintiff's introductory libellus. The Defender should be careful to give enough facts that the background of the case will be clear to the Judges as they read and study his arguments.)

II

IN JURE. The following canons of the Code of Canon Law are applicable in the adjudication of this case:

Canon 1013, § 1. "Matrimonii finis primarius est procreatio atque educatio prolis; secundarius etc...."

§ 2. "Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae etc...."

Canon 1081, § 2. "Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat etc...."

Canon 1086, § 2. "At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem actum, etc. . . ."

It is the matrimonial consent which brings the marriage bond into existence. This consent is an act of the will granting to each other the rights of marriage and binding each to the matrimonial life created by Almighty God. Authors naturally distinguish between external consent and internal consent and rightly conclude that the internal consent is essential and finds expression in the external signs--either words or other signs--as found in the marriage ceremony. The internal consent of the mind is always presumed to be in agreement with the words or signs given in the celebration of the marriage. Thus, once the marriage ceremony has been performed, a person who would attack the validity of his consent must show by indubitable proof that he did not actually "mean what he said". Simple error about the nature or ends of marriage would not destroy the validity of the consent unless that error so influenced the will that it conditioned the consent in such a way that the consent would not have been given if the error had been removed. (See S. R. Decisiones 19-- , XX, p. xxx. ; 10-- , XXXX, p. xxx.)

A most important distinction to be understood and kept in mind in studying a case of this kind is the distinction between the "right to the marriage act" and the "abuse of that right". The former is essential to the marriage and if positively excluded, the consent is vitiated and the marriage is invalid. The latter is but a sinful intention to misuse a right and does not affect the validity of the consent nor of the marriage. (See S. R. Decisiones 10-- , XXX, p. xxx, etc.)

(Note. In this manner, the Defender must state and explain the law which applies to the case. Note carefully that the above is but a sample and is meant only to indicate how the Defender is to prepare his animadversions: the law is to be quoted in full; an expose of the interpretation of the law by approved authors and as found in the Rotal Decisions should be given to the extent necessary; all necessary distinctions should be brought out and their application in the case noted.)

III

IN FACTO. The allegations of the plaintiff that Mary Ann Jones did not have the proper intentions in contracting marriage are not based on solid proof or evidence.

The testimony of Mrs. Amelia Wright, one of the principal witnesses adduced by the plaintiff, contains contradictions which would indicate that she was not too familiar with the true mind of the respondent and which contradictions destroy the weight of her testimony as evidence. Consider the following excerpts from her testimony:

Q. Did Mary Ann Jones before marriage discuss with you her ideas about marriage?

A. Yes, very often. (Question 15, p. 48)

Q. On how many occasions did Mary Ann tell you that she did not intend to have children?

A. Once or twice. I remember that I was horrified to hear her speak about children the way she did. . . . (Question 26, p. 50)

etc. etc.

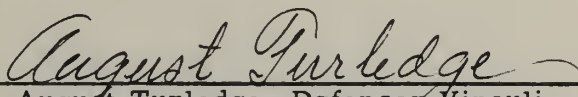
Mrs. Peter Cloud, another witness for the plaintiff, hardly offers compelling testimony! Most of what she relates is of the nature of gossip so that she could not, even in one instance, identify the source of her knowledge.

(Thus, the Defender of the Bond, having studied carefully the testimony of all the witnesses and all other proofs submitted, uses them to show that the allegations of the plaintiff have not been sustained during the trial. It is the duty of the Defender to uphold the validity of the marriage and he is obliged in conscience to make his arguments as strong as possible; he is not, however, to "strain at a gnat" nor fabricate arguments in defending the marriage.)

IV

In summing up, it appears to this Defender of the Bond that while this was an unfortunate marriage, entered into without the proper preparation and understanding, nevertheless the presumption of the validity of the consent and therefore of the marriage is not overthrown by the line of witnesses and the evidence that has been presented. Wherefore the undersigned asks the court to uphold the validity of the marriage of James Paul Smith and Mary Ann Jones and render its decision "NON CONSTAT DE NULLITATE MATRIMONII IN CASU."

New Orleans, Louisiana
June 25, 1958


August Turledge, Defensor Vinculi

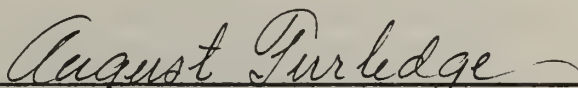
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New Orleães, Louisiana
June 25, 1958


August Turlledge, Defensor Vinculi

JAMES PAUL SMITH

No. 28/52

vs

MARY ANN JONES

EX CAPITE: Intentionis
contra bona prolis et
sacramenti.

THE REJOINDER OF THE AD-
VOCATE-PROCURATOR IN THE
ABOVE NUMBERED CASE.

May it please the Honorable Judges of the Matrimonial Tribunal of the Archdiocese of New Orleans to hear and consider the following answers to the "Animadversiones" of the Defender of the Bond and to find for the Plaintiff, James Paul Smith, who pleads the invalidity of his marriage to the Defendant, Mary Ann Jones.

I

The Right Reverend Defender of the Bond alleges that the testimony of Mrs. Amelia Wright contains contradictions which destroy the value of her testimony. We respectfully submit that a close and careful study of the testimony of this witness, however, will show that these contradictions are more apparent than real. Mrs. Wright spoke with conviction and certitude, answering the questions unhesitatingly and sincerely (Cf Minutes of 4th Session, p. 53); however, not being versed in Canon Law and Theology and not having the appreciation of a Canon Lawyer or Theologian for the necessity of using terms exactly, she did not always express herself with exactitude nor make the distinctions required. Yet, if each statement she made is taken in context and her testimony is considered in its entirety, it becomes obvious that she knew with certainty the real mind of the Defendant before, during and after the marriage; and that it was her conviction that the Defendant was determined never to have a child under any circumstances, that Defendant would never marry if a child were the inevitable result of such a union, and that Defendant expected to marry many times in her life (but under her own terms). We find the testimony of this witness most conclusive; we contend that the apparent contradictions disappear when the testimony is read as a whole and with regard for the witness' normal inability to express herself in technical language; and we argue that said testimony bears out the allegation of the plaintiff, namely, that the consent of his spouse was not true marital consent because she had a positive will to exclude the right to normal and moral intercourse as well as to exclude the essential indissolubility of marriage.

II

We admit with the Defender of the Bond that the testimony of Mrs. Peter Cloud is "not very compelling evidence" --not by itself. Viewed in the light of the other testimony and evidence offered we do contend that it has adminicular weight and does help throw open the mind of the Defendant. We would also call attention to the fact that a repeated effort on the part of the Praeses to make the witness state positively that the Defendant intended a true marriage was unsuccessful:

Ex Officio. Q. Despite her attitude toward marriage, don't you think Mary Ann Jones thought she was marrying for life?

A. I don't know. (p. 65)

Ex Officio. Q. Don't you think she (Mary Ann Jones) would have been happy if a child did come?

A. I can't say. I don't know. (p. 67)

III

With reference to the admission of the letter of the Defendant's paramour by which he refused to answer the summons to appear and give testimony (which letter the Defender of the Bond insists is inadmissible as evidence) we prefer to leave this to the judgment of the Honorable Judges without argument.

IV

The testimony of Father Jackson regarding the lost letter of the Defendant appears sufficient to establish the fact of the original letter and its contents; we still argue that Father Jackson's testimony is compelling evidence of the mind of the Defendant and her intentions regarding an indissoluble union.

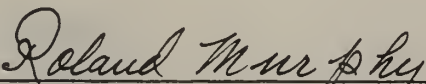
(In this manner, the Advocate-Procurator proceeds to answer briefly yet strongly the arguments advanced by the Defender of the Bond in his Brief or Animadversiones. Again, this rejoinder is but a sample and the reader is to keep in mind that it is meant only as a guide in preparing an actual rejoinder. It will frequently be necessary to quote extensively from the testimony of the witnesses or the acts of the case; occasionally, it will be necessary to argue a point of law, its interpretation or its application. The rejoinder ordinarily will not exceed about ten pages. The rejoinder is a direct answer to the arguments of the Defender of the Bond which are considered point by point.)

V

We respectfully submit to the Honorable Judges of the Tribunal that the testimony of two absolutely reliable witnesses, namely, Mrs. Amelia Wright and Mr. Arthur Kuhn, together with the corroborative testimony of Mrs. Peter Cloud and The Reverend Morris Jackson as also the documents offered and admitted as evidence prove with moral certainty that the Defendant, Mary Ann Jones, by a positive act of the will excluded both the conjugal right and the indissolubility of marriage.

Wherefore, we beg the Honorable Judges, after hearing the rejoinder of the Defender of the Bond, to render a decision without further argument, and that its decision be CONSTAT DE NULLITATE MATRIMONII IN CASU.

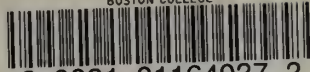
New Orleans, Louisiana
May 21, 1953


Roland Murphy, Advocate-Procurator

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